SUPREME COURT, U. S.

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IN THE

Supreme Court of the United States

Term, 19 No. 522

FEDERATION CREDIT UNION, LOCAL NO. 89, N.F.P.O.C. and ALFRED A. NEUBAUER, JOHN J. DRISCOLL, MORRIS GELLER, WILLIAM J. BARNES, HARRY E. DOBLER, SAMUEL BLANK, JOHN P. WINTERS, SIDNEY J. BLASKEY, HARRY E. ROBINSON, MAXWELL SALZMAN, SAMUEL SOIFERMAN, ROBERT P. KEPHART and WILLIAM B. THOMAS,

Petitioners,

v.

HUBERT P. RENDER, JOSEPH D. KENNEDY and WILLIAM H. NOLAN,

Respondents

PETITION FOR WRIT OF CERTIORARI TO SUPREME COURT OF PENNSYLVANIA

HARRY I. JACOBSON
STANLEY M. GREENBERG
Counsel for Petitioners

20 South 15th Street
Philadelphia, Pa. 19102

THE LEGAL INTELLIGENCER, 10 S. 37TH ST., PHILA. 4

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FEDERATION CREDIT UNION, LOCAL NO. 89, N.F.P.O.C. and ALFRED A. NEUBAUER, JOHN J. DRISCOLL, MORRIS GELLER, WILLIAM J. BARNES, HARRY E. DOBLER, SAMUEL BLANK, JOHN P. WINTERS, SIDNEY J. BLASKEY, HARRY E. ROBINSON, MAXWELL SALZMAN, SAMUEL SOIFERMAN, ROBERT P. KEPHART and WILLIAM B. THOMAS,

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PETITION FOR WRIT OF CERTIORARI TO SUPREME COURT OF PENNSYLVANIA

FEDERATION CREDIT UNION, LOCAL NO. 89, N.F.P.O.C. and ADOLPH A. NEUBAUER ET AL., petitioners, pray that a Writ of Certiorari issue to review the judgment of the Supreme Court of Pennsylvania, Eastern District, entered in the above entitled case on August 6, 1963.

Opinions Below

The majority and dissenting opinions of the Supreme Court of Pennsylvania are reported in 411 Pa. 625 (1960), and are printed in Appendix A to this Petition. The opinions of the Court en banc of the Court of Common Pleas No. 4 of Philadelphia County, and the adjudication of the Chan-

cellor are not reported and are printed in Appendix B to this Petition.

Jurisdiction

The judgment of the Supreme Court of Pennsylvania was entered on August 6, 1963. The jurisdiction of this Court is invoked under 28 U.S.C. Section 1257(3).

Questions Presented

I. Did the fifteen hundred (1500) members of the CREDIT UNION upon disaffiliation from LOCAL 89 automatically and immediately lose their right to vote to amend the Charter and By-Laws of the Credit Union?

II. In holding that the Amendments of April 27, 1961, were invalid because they "changed the organic purpose of the Credit Union," did the Lower Court usurp the powers of the Secretary of Banking initially to determine whether a proposed field of membership meets the requirements of the Pennsylvania Credit Union Act?[1]

III. Does the Decree of the Lower Court in holding that the fifteen hundred (1500) members of the Credit Union, by disaffiliating from LOCAL 89, automatically and instantaneously terminated all their rights as members of the Credit Union offend the policy announced by the Congress of the United States?

Constitutional Provision Involved

The Constitutional Provisons involved are Amendment 14, Section I of the Constitution of the United States, reading in relevant part: . . . "nor shall any State deprive any person of life, liberty, or property without due process of law; . . ."

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[1] Act of May 26, 1933, P. L. 1076, at amended by Act of May 18, 1937, P. L. 713 and Act of June 24, 1939, P. L. 745, 14 Purdon's Pa. Statutes, §201, et seq.

Statute Involved

The statutory provisions involved are Sections 4, (14 P.S. §204), 5 (14 P.S. §205), 6 (14 P.S. §206) and 18 (14 P.S. §218) of the Pennsylvania Credit Union Act (supra), Section 202 of the Pennsylvania Department of Banking Code [2] and both the Labor-Management Relations Act of 1947 [3] and the Labor-Management Reporting and Disclosure Act of 1959.[4] These statutory provisions are printed in Appendix C & D, infra, pages 58 to 62.

Statement of the Case

This case involves a Credit Union and a Labor Union, both of which were identified by LOCAL NO. 89 in their names; however, each is a separate legal entity and the membership is not the same. (To avoid confusion we will hereafter refer to the two organizations as "LOCAL 89" and CREDIT UNION".) In 1934 members of LOCAL NO. 89, NATIONAL FEDERATION OF POST OFFICE CLERKS (LOCAL 89) incorporated a Credit Union (CREDIT UNION) pursuant to the Act of May 26, 1933, P. L. 1076, 14 P.S. §§201-226 [5] which provided in Section 4 (14 P.S. §204):

> "Credit Union membership shall consist of the incorporators and such other persons as may be elected from time to time to membership and . . . be *limited to groups* of both large and small membership *having a common bond of association by reason of occupation* . . ." (Emphasis supplied).

The By-Laws of the CREDIT UNION limited membership

[2] Act of May 15, 1933, P. L. 656 as amended, 71 Purdon's Pa. Statutes, §733-202.

[3] Section 7 of the Act of 1947, 29 U.S.C.A. 141.

[4] Section 401(a)(3) of the Act of 1959.

[5] The Act has been replaced by the Credit Union Act, September 20, 1961, P. L. 1548, No. 658, 14 P.S. §§236-1 to 236-33 (1962 Supp.). However, there were no changes which would materially affect the determination of the issues here involved.

"to the members in good standing of LOCAL 89 . . ."[6] and provided that "a member who leaves the sphere of operation of the corporation [here the United States Post Office] may retain his shares of stock. . ." in the CREDIT UNION.[7]

In 1958, an overwhelming majority of LOCAL 89 left the Labor Union and formed a new Union, the Philadelphia Post Office Clerks Union (Clerks Union). Of approximately fifteen hundred and fifty (1550) members of the CREDIT UNION more than fifteen hundred (1550) left LOCAL 89 to join the Clerks Union. On the same day as the withdrawal from LOCAL 89, at a special meeting, the majority of a quorum of the CREDIT UNION voted to amend its By-Laws to limit membership in the CREDIT UNION to members of the Clerks Union. These amendments, required to be approved by the Department of Banking before becoming effective (Section 2, 14 P.S. §202E), were denied approval by the Department because they would exclude from the CREDIT UNION the members of LOCAL 89.

Plaintiffs, representing the forty-eight (48) members of the CREDIT UNION, who remained in LOCAL 89 brought this representative suit against the CREDIT UNION and its officers who had disaffiliated from LOCAL 89. Prior to the entry of the Decree Nisi, after consultation with the Department of Banking, the members of the CREDIT UNION (including the fifteen hundred (1500) adopted amendments which would make the members of *both* Labor Unions eligible for membership in the CREDIT UNION. These amendments *were approved* by the Department of Banking on July 18, 1961, which was subsequent to the Chancellor's disposition of the case. In an extremely well reasoned adjudication, the Chancellor denied plaintiffs the relief sought by them and found, inter alia,

> "The individual defendants have not been guilty of any improper conduct."

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[6] Article 2, Section 1.
[7] Article 2, Section 6.

"None of the property of the Credit Union has been wasted, diverted or improperly transferred."

"No vote or other action was taken at any meeting of the Credit Union to expel the defendants or the other Credit Union members who are also members of the Clerks Union."

"Article 2, Section 1 relates to initial admission to membership in the Credit Union and does not operate so as to dismiss automatically from membership members of the Credit Union who lose their status as members in good standing of Local 89."

"No member entitled thereto has been denied any of his lawful rights in the defendant Credit Union, nor has the conduct of the officers or the membership of the Credit Union, caused or threatened any loss to the Credit Union or the members thereof."

However, the Court en banc (Chancellor included) sustained plaintiffs' Exceptions and decreed that since appellants were not members of LOCAL 89, they were not, therefore, members of the CREDIT UNION, and that the amendments to the By-Laws were not properly enacted.

The majority of the Supreme Court of Pennsylvania, Eastern District, affirmed the Decree of the lower Court upon the "Opinion sur Exceptions to Adjudication" dated April 3, 1962 of the Court en banc. Mr. Justice Roberts wrote a dissenting opinion in which Mr. Chief Justice Bell joined.

The federal question dealing with interstate commerce and the statutes related thereto was raised by the Chancellor in his adjudication, pages 12 and 13. (Appendix B attached hereto), and in the brief of petitioner before the Supreme Court of Pennsylvania.

The federal question dealing with the "due process clause" of the 14th Amendment of the Constitution of the United States was not and could not be raised at the plead-

ing stages of this case because the deprivation of procedural and substantive due process was only first cognizable when the Final Decree and Conclusions of Law of the Court en banc, were rendered enjoining petitioner from amending the Charter and By-Laws of the Credit Union, and further enjoining petitioner from operating the Credit Union in any matter whatsoever. (Page 17 Opinion sur exceptions to Adjudication, Appendix B. attached hereto).

Therefore, the only mention *of record* of a deprivation of due process, is that of Mr. Justice Roberts and Mr. Chief Justice Bell in their dissenting opinion, which is set forth in Appendix A. of this Petition. The decision of the majority of the Supreme Court of Pennsylvania ostensibly is based solely upon a non-federal ground, and this Court has held that it will determine whether the non-federal ground independently and adequately supports the judgment. Only if the non-federal ground is adequate, will review be declined. *Wood v. Chesborough*, 228 U. S. 672, 676-80; *West Chicago St. R. Co. v. Illinois, ex rel. Chicago*, 201 U. S. 506, 519-20; *Chicago B. & Q. Ry. Co. v. Illinois, ex rel. Com'rs*, 200 U. S. 561, 580-1.

Moreover, the non-federal ground is so interwoven with the federal questions presented as not to be an independent matter and this Court can then render decision on all the related questions, federal and non federal.

Enterprise Irrig. Dist. v. Farmers' Mut. Canal Co., 243 U. S. 157, 164; *Ivanhoe Irrigation District v. McCracken*, 357 U. S. 275, 290.

Reasons for Granting the Writ

The decision of the Supreme Court of Pennsylvania, Eastern District is contrary to long established and fundamental concepts of the nature of Credit Unions[*] and their relationship with their members.

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[*] The Pennsylvania Credit Union Act (14 P.S. §230-2) defines a Credit Union in the following language: "The term Credit Union as used in this Act means a cooperative association incorporated

Moreover, the hearing of the instant case by this Court *will be a precedent affecting Credit Unions organized under the laws of the States and those organized under the Federal Credit Union Act.*

I. The conclusion of the Court en banc and the majority of the Supreme Court of Pennsylvania, Eastern District that the fifteen hundred (1500) members of the CREDIT UNION who terminated their membership in LOCAL 89 thereby automatically losing their membership and rights in the CREDIT UNION is without justification or authority.

The ruling of the Court en banc and of the majority of the Supreme Court of Pennsylvania fails to give effect to Section 18 of the Act (14 P.S. §218) which specifically provides:

> "*A member may be expelled by two-thirds' vote* of the members present at a regular or special meeting called to consider the matter, *but only after a hearing*

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under this Act or under the Act of May 26, 1933 (P. L. 1076), its amendments and supplements, for the purpose of promoting thrift among its members and creating a source of credit for such members, at reasonable rates of interest for provident purposes." In most Credit Unions, the directors, officers and committee members are unpaid laypeople who have full time occupations, hence the service to the Credit Union is usually a voluntary use of their leisure time for the common good. In Federal Credit Unions the Act specifically forbids compensation to any officer, director or committee member except the treasurer; in State chartered Credit Unions officers, directors and committee members (except for the treasurer) can only be compensated if the Credit Union has paid a dividend of not less than 3% from the earnings of the last year and any such compensation is further subject to regulation by the Secretary of Banking as set forth in the Act.

As of December 31, 1961, there existed in Pennsylvania 123 State chartered credit unions having a total membership of approximately 90,000 and 1,080 Federally chartered credit unions having a total membership of approximately 553,000. Throughout the United States as of December 31, 1961, the total number of Federal and State chartered credit unions in the United States was 20,902 having a total membership of 12.8 million.

after due notice to the member of the time and place of the meeting of the reason or reasons for such proposed expulsion." (Emphasis supplied).

Not one step of this mandated procedure was followed. Further, there is no provision in the By-Laws of the CREDIT UNION which authorizes the *automatic* expulsion of a member. The requirement of membership in good standing of LOCAL 89 found in Article 2, Section 1 of the By-Laws is a requirement for eligibility upon election to membership, not disqualification or expulsion. Moreover, Article 2, Section 6 refutes the contention that expulsion was automatic since that Section permits a member to retain his membership in the Credit Union even if he leaves the sphere of operation of his employer, which would, in all likelihood, result in his leaving LOCAL 89.

In its Brief as amicus curiae, the Department of Banking explained that the first amendments were disapproved because the result would have been to expel forty-eight (48) members and to deprive them of Credit Union benefits for failure to disassociate from LOCAL 89. The approved amendments of July 18, 1961, would eliminate this result. A true and correct copy of the Brief of the Secretary of Banking of the Commonwealth is printed in Appendix E.

The Decree of the Court en banc and the majority of the Supreme Court of Pennsylvania, erroneously concluded that the purpose of the defendants was to deprive the plaintiffs of their property rights without due process of law. But that Decree, now with the support of the majority of the Supreme Court of Pennsylvania, will even more severely deprive over fifteen hundred (1500) persons of their property rights. The view of the majority permits forty-eight (48) members to penalize without justification or authority, over fifteen hundred (1500) fellow employees who left LOCAL 89. Such a harsh result is unsound and unnecessary.

The fact that the Act requires a common bond of association in order to be eligible for election to membership in a Credit Union does not either expressly or inferentially

terminate membership in the Credit Union upon leaving the sphere of operations. It is submitted that the requirement of the Act is that the person be within the field of membership at the time he applies to be a member of the CREDIT UNION. In other words, good standing in LOCAL 89 was a condition precedent to election to membership but was not a continuing requirement to remain a member of the CREDIT UNION. Equally, the Articles of Association of the CREDIT UNION (certified transcript, plaintiffs Exhibit 3, record page 195a) which defines the field of those eligible for membership speaks only as of the time of joining the CREDIT UNION and does not purport automatically to terminate membership upon leaving the common bond of association.

If the Pennsylvania Legislature had so intended it could have specifically provided for termination of membership where the desired result is that membership in one organization is contingent upon continued good standing in another organization.

"Due process of law", while incapable of exact definition, generally means "law in the regular course of administration through Courts of justice, according to those rules and forms which have been established for the protection of human rights": 12 Am. Jur. Section 571, page 264, and cases therein cited. Its essential elements are: "Notice and opportunity to be heard and to defend in an orderly proceeding adapted to the nature of the case before a tribunal having jurisdiction of the cause": *Carter v. Kubler*, 320 U.S. 243, 88 L. ed. 26, 64 S. Ct. 1; *Ohio Bell Telephone v. Public Utilities Commission of Ohio*, 301 U.S. 292, 81 L. ed. 1093, 57 S. Ct. 724; *Interstate Commerce Commission v. Louisville and Nashville Railway Company*, 227 U.S. 88, 27 L. ed. 431, 33 S. Ct. 185. As this Court has said in *Betts v. Brady*, 316 U.S. 455, 462, 86 L. ed. 1595, 62 S. Ct. 1252: "Asserted denial (of due process) is to be tested by an appraisal of the totality of facts in a given case."

Whenever a Governmental body acts so as to injure an individual, the Constitution requires that the act be con-

sonant with due process of law. The minimum procedural requirements necessary to satisfy due process depend upon the circumstances and interests of the parties involved. As stated by Mr. Justice Frankfurter concurring in *Joint Anti-Fascist Refugee Committee v. McGrath*, 341 U.S. 123, 163, 71 Supreme Ct. 624, 644, 95 L. ed. 817:

> "Whether the *ex parte* procedure to which the petitioners were subjected duly observed 'the rudiments of fair play', cannot, therefore, be tested by mere generalities or sentiments abstractly appealing. The precise nature of the interest that has been adversely affected, the manner in which this was done, the reasons for doing it, the available alternatives to the procedure that was followed, the protection implicit in the office of the functionary whose conduct is challenged, the balance of hurt complained of, and good accomplished—these are some of the considerations that must enter into the judicial judgment."

> "Whether acting *through its judiciary* or through its legislature, a state may not deprive a person of all existing remedies, for the enforcement of a right, which the state has no power to destroy, unless there is, or was, afforded to him some real opportunity to protect it." *Brinkerhoff-Faris Trust & Sav. Co. v. Hill*, 281 U.S. 682, 74 L. Ed. 1114, 50 S. Ct. 451. (Emphasis supplied.)

It is not enough to say, as have the Court en banc and the majority of Supreme Court of Pennsylvania in the present case, that had the fifteen hundred (1500) members adopted the amendments prior to disaffiliation, their property rights in the CREDIT UNION would have been preserved. In *Cafeteria and Restaurant Workers Union v. McElroy et al.* (1961), 81 S. Ct. 1743, the Court said:

> "One may not have a Constitutional right to go to Bagdad, but the Government may not prohibit one from going there unless by means consonant with due process of law."

As in that case so here, it is necessary to consider "the nature both of the private interest which has been impaired and the Governmental power which has been exercised." In the instant case, the Court in failing to observe Section 218 of the Credit Union Act, supra, which provided for notice and hearing of members of the CREDIT UNION before expulsion, such action constituted a violation of the due process clause of the 14th Amendment of the Constitution of the United States.

II. The opinion of the Court en banc and the affirmance of it by the majority of the Supreme Court of Pennsylvania accepted respondent's argument that the amendments of April 27, 1961 were invalid because they changed the "organic purpose of the Credit Union." (Per curiam opinion, pages 43-58 infra).

The effect of this holding is to usurp the powers of the Secretary of Banking initially to determine whether a proposed field of membership meets the requirements of the Pennsylvania Credit Union Act. Section 203-X of the Act specifically provides for approval of the Secretary of Banking of amendments to the Articles or By-Laws before same become effective. Section 202D and E impose upon the Secretary of Banking the duty to determine whether the application is in proper form and within the purposes mentioned in the Act. Section 205 provides that the Secretary of Banking has the power of "supervision over Credit Unions and may proceed against any Credit Union violating the terms of the Act."

This is a clear statutory mandate for the Secretary of Banking to act, in his discretion, to see that the purposes and requirements of the Act are not violated by any Credit Union.

This principle was recognized by the New York Courts in a case involving disaffiliation similar to the instant case from Local Labor Union No. 10 of the same National Union, N.F.P.O.C. which is involved in the instant case and Federal Credit Union which defined its field of membership

by reference to members of Local Union No. 10, N.F.P.O.C. (*J. Cline House et al. v. Bernard Schwartz et al.*, *New York Law Journal*, Volume 141, No. 113, June 11, 1959.) In that case the Court very properly had declined to enjoin proposed amendments to the Credit Union Charter on the ground that the field of membership and amendments to the Charter were a matter for the primary jurisdiction of the supervisory agency, the Bureau of Federal Credit Unions. The Court held that the requested relief was premature in that remedial relief before the Bureau of Federal Credit Unions had not been pursued and exhausted. It further pointed out that amendments covering the field of membership were subject to the approval of the Bureau and that therefore, the Congress had placed the decision in the hands of an administrative agency and the Court could not interfere prior to action by the Bureau of Federal Credit Unions.

Since this publication may not be readily available to the Court, the portion of the Opinion dealing with the Credit Union aspect of the case is printed in the appendix hereto as Exhibt F. (infra, pp. 68).

In the instant case the Secretary of Banking *approved* the amendments to the Articles and By-Laws of the April 27, 1961, which changed the field of membership to include both the members of Labor Union No. 89 and the members of "Philadelphia Post Office Clerks Union" (the latter being the Labor Union joined by those who disaffiliated from Local No. 89). This *approval* took place on July 18, 1961, which was eleven (11) days after the Chancellor's Adjudication dismissing the respondents' Complaint in Equity. Neither the majority of the Supreme Court of Pennsylvania nor the Court en banc makes reference to this action of the Secretary of Banking. This action of the Court en banc and of the Supreme Court of Pennsylvania creates the anomalous situation of the Court and the Secretary of Banking reaching opposite conclusions as to the validity of the Amendments. In fact, as of July 18, 1961, there no longer was a

Credit Union which confined its field of membership to LOCAL NO. 89; but, rather a Credit Union then existed which included within its field of membership both members of LOCAL NO. 89 and the Labor Union of the disaffiliated members. Thus, the Credit Union which the Supreme Court of Pennsylvania and the Court en banc considered, was not even legally in existence on the date that the Court en banc reversed the Chancellor.

This unfortunate conflict between the action of the Secretary of Banking and that of the Supreme Court of Pennsylvania and Court en banc could have been avoided if the lower Court had recognized that the Pennsylvania Credit Union Act (Act of May 26, 1933, supra), gives the Secretary of Banking exclusive jurisdiction to *"initially determine the validity of proposed Amendments"*. 14 P.S. §§201 et seq. (supra). The record shows that the Petitioners twice objected that the Secretary of Banking had to be joined as a party (Petitioners' Preliminary Objections and Petitioners' Amended Answer and New Matter page 120A Certified Transcript). The Chancellor did not act on the Objection, which became immaterial in that the relief requested by Respondents was denied and their Complaint in Equity dismissed. However, the Court en banc, when they reversed the Chancellor, apparently gave no heed to the fact that they were acting in an area where discretion had been committed by the Legislature to the Secretary of Banking.

It must be pointed out to this Court that Local Union No. 89, N.F.P.O.C. is no longer in existence, having merged into another National Labor Union, United Federation of Postal Clerks (hereinafter referred to as UNIPOC), as Local Labor Union No. 89 of this different National Union. Therefore, if the position advanced by the Respondents is correct then there are no valid members of the CREDIT UNION since there are no longer any members of the Labor Union which is referred to in the CREDIT UNION'S Articles and By-Laws. To avoid this incongruous and self-defeating result the Secretary of Banking is necessarily given discre-

tion to approve a change of the field of membership so that the CREDIT UNION may continue to give service to their members even though the Labor Union referred to in the Articles as the *source of membership* is no longer in existence.

The argument, that the Amendments invalidly change the organic purpose of the CREDIT UNION, founders because the CREDIT UNION'S purpose was not to be an instrument of the Labor Union but its purpose was to serve its members. It therefore necessarily follows that when ninety-six per cent (96%) of the CREDIT UNION members leave the field of membership the purposes of the CREDIT UNION can best be served by expanding the definition of the permissible field of membership, and the Secretary of Banking acted within his legislatively authorized discretion in approving the Amendments.

The beneficial result achieved by the decision of the Secretary of Banking should be compared with the detrimental results of the Supreme Court of Pennsylvania whereby it becomes impossible ever to change the field of membership even though the basic common bond of membership remains (although the Act contemplates amending such); loss of the right of fifteen hundred (1500) members to share in the surplus funds of the Credit Union amounting to approximately forty to fifty thousand dollars ($40,000-$50,000); forfeiture of the right to vote of ninety-six per cent (96%) of the CREDIT UNION members; forfeiture of all property rights of the majority and the assets and reserves of the CREDIT UNION with consequent unjust enrichment; the virtual death of the CREDIT UNION because too small to be economically feasible and lacking a source of new members; and in the instant case, after Local Union No. 89 N.F.P.O.C. merged with a new Union the CREDIT UNION had no members capable of casting a vote.

III. Aside from the other considerations here presented the legality of a provision in the By-Laws of a corporation such as respondents seek to insert by interpretation even if clearly expressed, would be unenforceable.

It appears clear that the members of the CREDIT UNION are employed in interstate commerce. It is expressed public policy of the United States to encourage "full freedom of association" among employees in interstate commerce. Both the Labor Management Relations Act of 1947 (The Taft-Hartley Law) and the Labor-Management Reporting and Disclosure Act of 1959 are designed to encourage among employees "the right to meet and assemble freely."[9] A provision in a Credit Union Charter or By-Law which would require continued affiliation with any specific Labor Union under penalty of a loss of important property rights would appear to offend the policy announced by the Congress of the United States. It is obviously inconsistent with Title I, Section 101 of the Act of 1947 in which "it is hereby declared to be the policy of the United States to eliminate the causes of . . . obstructions to the free flow of commerce . . . by protecting the exercise by workers of full freedom of association, self-organization and designation of representatives of their own choosing . . ."

CONCLUSION

For the foregoing reason, this Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

HENRY I. JACOBSON
STANLEY M. GREENBERG
Counsel for Petitioners

Date:

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[9] Footnotes 4 and 5, supra, and appendix C, infra, pp. 58-59.

APPENDIX A

IN THE

SUPREME COURT OF PENNSYLVANIA

EASTERN DISTRICT

No. 306 January Term, 1962

HUBERT P. RENDER, JOSEPH D. KENNEDY and WILLIAM H. NOLAN

v.

FEDERATION CREDIT UNION LOCAL NO. 89, N.F.P.O.C., and ADOLPH A. NEUBAUER, ET AL., *Appellants*

Appeal from the Decree of the Court of Common Pleas No. 4 of Philadelphia County.

Opinion of the Court

COHEN, *J.* Filed: June 4, 1963

In this action the chancellor, as a member of the court en banc, joined in sustaining exceptions to his adjudication. The decree of the court en banc restrained officers and members of a credit union from violating the statute under which the credit union was chartered and the Letters Patent chartering the credit union.

Decree affirmed, at appellants' costs.

Justice Roberts files a dissenting opinion, in which Chief Justice Bell joins.

Dissenting Opinion

ROBERTS, J. Filed: June 4, 1963

I disagree with the majority's affirmance of a result which inequitably deprives over 1500 persons of their status and property rights in a voluntary association while granting preferential treatment to the interests of only 48.

In 1934, members of Local No. 89, National Federation of Post Office Clerks [Local 89] incorporated a credit union [Credit Union] pursuant to the Act of May 26, 1933, P. L. 1076, 14 P.S. §§201-226 (1958) [Act],[1] which provides in Section 4 (14 P.S. §204):

> "Credit union membership shall consist of the incorporators and such other persons as may be elected from time to time to membership and . . . shall be *limited to groups* of both large and small membership *having a common bond of association by reason of occupation.* . . .". (Emphasis supplied.)

The by-laws of the Credit Union limited membership "to the members in good standing of Local #89 . . ."[2] and provided that "a member who leaves the sphere of operation of the corporation [here the U.S. Post Office] may retain his shares of stock . . ." in the Credit Union.[3]

In 1958, an overwhelming majority of Local 89 left that labor union and formed a new union, the Philadelphia Post Office Clerks Union [Clerks Union]. Of approximately 1550 members of the Credit Union, more than 1500 left Local 89 to join the Clerks Union. On the same day as the withdrawal from Local 89, at a special meeting, the majority of a quorum of the Credit Union voted to amend its by-

[1] The Act has since been replaced by the Credit Union Act, September 20, 1961, P. L. ——, No. 658, 14 P.S. §§230-1 to 230-33 (Supp. 1961). However, there were no changes which would materially affect the determination of the issues here involved.

[2] Article II, Section 1.

[3] Article II, Section 6.

laws to limit membership in the Credit Union to members of the Clerks Union. These amendments, required to be approved by the Department of Baikng before becoming effective, §2, 14 P.S. §202E, were denied approval by the Department because they would exclude from the Credit Union those members still in Local 89.

Plaintiffs, representing the 48 members of the Credit Union who remained in Local 89, brought this representative suit against the Credit Union and its officers, who had disaffiliated from Local 89. Prior to the entry of the decree nisi, after consultation with the Department of Banking, the members of the Credit Union (including the 1500) adopted amendments which would make the members of both labor unions eligible for membership in the Credit Union. (These amendments were approved by the Department of Banking subsequent to the chancellor's disposition of the case.)

In an extremely well-reasoned adjudication, the chancellor denied plaintiffs the relief sought by them and found, inter alia,

> "The individual defendants have not been guilty of any improper conduct."
>
> "None of the property of the Credit Union has been wasted, diverted, or improperly transferred."
>
> "No vote or other action was taken at any meeting of the Credit Union to expel the defendants or the other Credit Union members who are also members of the Clerks Union."
>
> "Article II, Section 1 relates to initial admission to membership in the Credit Union and does not operate so as to dismiss automatically from membership members of the Credit Union who lose their status as members in good standing of Local 89."
>
> "No member entitled thereto has been denied any of his lawful rights in defendant Credit Union, nor

> has the conduct of the officers or the membership of the Credit Union, caused or threatened any loss to the Credit Union or the members thereof."

However, the court en banc sustained plaintiffs' exceptions and decreed that since appellants were not members of Local 89, they were not, therefore, members of the Credit Union, and that the amendments to the by-laws were not properly enacted.

I cannot agree with the conclusion of the court en banc and of the majority of this Court that the 1500 members of the Credit Union who terminated their membership in Local 89 thereby automatically lost their membership and rights in the Credit Union. The ruling of the court en banc, and of the majority here, fails to give effect to Section 18 of the Act (14 P.S. §218) which specifically provides:

> "*A member may be expelled by a two-thirds' vote* of the members present at a regular or a special meeting called to consider the matter, *but only after a hearing after due notice to the member* of the time and place of the meeting and of the reason or reasons for such proposed expulsion." (Emphasis supplied.)

Not one step of this mandated procedure was followed. Further, there is no provision in the by-laws of the Credit Union which authorizes the *automatic* expulsion of a member. The requirement of membership in good standing of Local 89 found in Article II, Section 1 of the by-laws is a requirement for eligibility upon election to membership, not disqualification or expulsion. Moreover, Article II, Section 6 refutes the contention that expulsion was automatic since that section permits a member to retain his membership in the Credit Union even if he leaves the sphere of operation of his employer, which would, in all likelihood, result in his leaving Local 89.

In its brief as amicus curiae, the Department of Banking explained that the first amendments were disapproved because the result would have been to expel 48 members

and to deprive them of Credit Union benefits for failure to disassociate from Local 89. The approved amendments would eliminate this result.

The decree of the court en banc, in my opinion, erroneously concluded that the purpose of the defendants was to deprive the plaintiffs of their property rights without due process of law. But that decree, now with the support of the majority of this Court, will even more severely deprive over 1500 persons of their property rights. The view of the majority permits 48 members to penalize without justification or authority, over 1500 fellow employees who left Local 89. Such a harsh result is unsound and unnecessary, and it may not be justified on the mere technicality that had the 1500 adopted the amendments prior to disaffiliation, their property rights in the Credit Union would have been preserved.

I am unable to understand why the action of over 1500 members which protects not only their property rights in the Credit Union but also those of the other 48 members is not as satisfactory to the majority as it was to the Department of Banking and to the chancellor. I would, therefore, reverse the decree and make the decree nisi absolute.

MR. CHIEF JUSTICE BELL joins in this dissent.

APPENDIX B

IN THE
COURT OF COMMON PLEAS No. 4
OF PHILADELPHIA COUNTY

December Term, 1958. No. 2926

HUBERT P. RENDER, ET. AL.

v.

FEDERATION CREDIT UNION LOCAL #89, N.F.P.O.C.; *et al.*

Adjudication

Plaintiffs, stockholders of the defendant credit union have brought this representative suit on behalf of themshelves and other stockholders. The defendants are FEDERATION CREDIT UNION LOCAL #89, N.F.P.O.C., (herein referred to as Credit Union), and the officers, directors and committee members of the Credit Union. The plaintiffs' Complaint charges that the individual defendants are not entitled to hold office in the Credit Union and that they are unlawfully administering its affairs. As a result of defendants' actions, the Complaint states, the plaintiffs are "threatened wtih loss of their property interest in the Credit Union, as the result or illegal transfer of property and assets to another Association."

The Credit Union was incorporated under the Act of 1933, May 26, P.L. 1076. Pursuant to an application for the incorporation of the Credit Union, including Articles of Association which were approved, letters patent were issued on February 26, 1934.

The By-Laws of the Credit Union contain the following provisions:

> "ARTICLE I. Sec. 2: The object of this corporation shall be to conduct the business of a Credit Union under the provisions of the Act of Assembly of Pennsylvania

No. 260, approved May 26, 1933, and for that purpose to possess all rights and privileges provided by law."

"ARTICLE II: Sec. 1: Membership in this Credit Union is limited to the members in good standing of Local Union #89, National Federation of Post Office Clerks in the Postal District of Philadelphia, Pa., upon subscribing for one or more shares and paying for the same in whole or in part."

The controversy before us stems from disaffection among members of a trade-union, Local #89, National Federtaion of Post Office Clerks, AFL-CIO (herein referred to as Local 89). In December of 1958 a majority of members of Local 89 became dissatisfied with their membership in this local and formed a new trade union known as Philadelphia Post Office Clerks Union (herein called Clerks Union). Of the more than 2,000 then members of Local 89, all but approximately 110 members joined the Clerks Union. At the time of the above referred to disaffection, a preponderant majority of the members of Local 89 belonged to the Credit Union.

The heart of plaintiffs' case can be paraphrased as follows:

"Membership in the Credit Union is limited to members in good standing in Local 89. The individual defendants by joining a rival organization (Clerks Union) with 'identical' 'ostensible' aims lost their membership in good standing in Local 89 by virtue of the provisions in the Constitution of Local 89.[1] Therefore

[1] Section 1 of the Constitution of Local 89 provides:

"Sec. 1: Any person in the classified civil service of the Post Office Department who is designated as a Post Office Clerk or Substitue Clerk or other postal employee not exercising supervisorial authority or eligible to membership in an organization affiliated with the American Federation of Labor-Congress of Industrial Organizations shall be eligible to membership except any person who is a member of any other Post Office Clerks' organization whose ostensible aims are identical with those of the National Federation of Post Office Clerks."

the individual defendants automatically lost their membership rights in the Credit Union, and therefore the operation of the Credit Union by the individual defendants and the handling of the funds and property of the Credit Union by them is unlawful and fraudulent."

Plaintiffs complain also that on December 28, 1958, defendant individuals in conjunction with other members of the Credit Union, have attempted improperly to amend the Credit Union's By-Laws and the Articles of Association in order that the name of the Credit Union shall be changed to "Philadelphia Post Office Clerks Credit Union" and that membership in the Credit Union shall be limited to members of the Clerks Union (instead of, as theretofore, to members of Local 89). Both the By-Laws of the Credit Union and the Act of 1933 provide that no amendment to the By-Laws or Articles of Association can become effective until approved by the Secretary of Banking.[2] It is conceded that although

[2] Article XIV of the By-Laws provides:

"Section 1. These by-laws may be amended at any regular or special meeting of members by a majority vote of the members present; provided, that notice of such meeting, containing a true copy of the proposed amendments, shall have been given as provided in these by-laws and such proposed amendment has been approved by the Secretary of Banking as by law provided."

The Act of 1933, P. L. 1076, Sec. 2, provides:

"E. The articles of association may be amended by including the proposed amendments in the call for the regular or special meeting at which such amendments are to be considered. Amendments to the Articles of association must be approved by three-fourths of the members present at the regular or special meeting at which the amendments are considered, and the proposed amendments shall be acted upon only in the event that a quorum of the members is present, as provided by the by-laws of the credit union. Articles of amendment shall be filed with the Secretary of Banking who, if he approves the amendments, shall forward the articles of amendment to the Department of State. The Secretary of the Commonwealth shall then issue a new certificate of incorporation, and shall record the articles of amendment in the office of the Secretary of the Commonwealth upon payment of the usual filing fee."

the application for approval by the Secretary of Banking has been made, the approval has not been received. . . . We must therefore regard the attempted amendments a nullity.[3]

There is no substantial dispute as to the facts involved in this case. The proofs submitted by the plaintiffs do not demonstrate that the defendants have in any way wasted the assets or committed any fraud nor have they in any way endangered the property rights of the plaintiffs.

If plaintiffs are not entitled to the removal of the officers of the Credit Union or to a new corporate election, their action must fail, because no other justification for equitable relief has been presented.

The gist of the plaintiffs' case is that the individual defendants are unlawfully acting as officers, directors and committee members respectively of the Credit Union. Plaintiffs' case cannot be supported in this respect for two reasons. Procedurally, an action in equity is not properly brought to test the right to corporate office. The proper action should be by quo warranto, and, on the merits, it has not been demonstrated that the individual defendants hold office improperly.

It has been settled beyond question that a court of equity will not entertain jurisdiction in a case in which allegations of diversion or misappropriation or unauthorized use of corporate property are necessarily dependent for substantiation upon the determination of the right of the corporate officers to hold office.

We consider the following statement of the court in *Siranovich et al. v. Butkovich et al.*, 359 Pa. 134 (1948) to be completely applicable to the case at bar. Since it is an excellent dissertation on the subject, we quote from it at length:

> "Appellants contend that allegations of diversion of funds, threatened misappropriation, and unauthorized use by persons claiming title to offices in the Union are sufficient for a court of equity to entertain juris-

[3] See discussion of amendments adopted April 27, 1961 (infra.).

diction and that validity of the election may be determined as incidental to the same proceeding. This contention is without merit where, as here, the misappropriation or diversion of funds is necessarily dependent upon determination of the right to control those funds —validity of the election.

A court of equity cannot acquire jurisdiction by reason of allegations of matters within its cognizance but which are incidental to and necessarily dependent upon determination of an issue which cannot properly be heard by it: *Cella v. Davidson*, 304 Pa. 389, 156 A 99; *Graeff v. Felix*, 200 Pa. 137, 139, 49 A 758. In *Deal v. Miller*, 245 Pa. 1, 5, 90 A. 1070, this court said: 'Were the determination of the validity of such an election an incidental question arising in the consideration of a substantive complaint of which equity had jurisdiction, the matter would be wholly different, but . . . the real question at issue and the fundamental one herein is the validity of the election of the defendants, as directors of the company.' *Cella v. Davidson*, supra, is analogous to the instant case. Member policyholders of a fraternal benefit society secured an injunction to vacate offices held by defendants and a receiver was appointed. The bill alleged that defendants were illegally occupying their offices and had caused uncertainty among the members in the society. *This court reversed and held that the controlling question was the right to occupy the offices and that other matters were incidental thereto.* It was said (p. 395): 'A court of equity cannot acquire or retain jurisdiction of matters not justifiably before it, *such as the removal of corporate officers or the direction of corporate election*, through the medium of another matter pleaded within its cognizance but as to which after hearing it does not act and grants no relief: Ahl's App., 129 Pa. 49, 61, 62. Appellees argue that the principle applies that equity having jurisdiction as to part of a controversy will round it out and afford full relief. This principle would apply if

the court had proceeded to adjudicate the matter over which it had jurisdiction and as incidental to complete relief in respect to it had disposed of the other matters averred in the bill, but here, . . . the court did not act upon the matter which gave it dominion over the case, but only on the incidental subjects over which in themselves it was without power.'

"The court below properly stated '. . . it is not contended that members of the Union are deprived of the right to seek equity's intervention. A suit to prevent the wrongful diversion of funds or the fraudulent use of funds would be such a situation; but that is not the situation in the instant case; here it is the right to administer the affairs of this Union and to hold the offices to which they claim to have been elected that is involved . . . the other matters are wholly the outgrowth of the disputed election. We are, therefore, of the opinion that the (appellants) must be relegated to their action at law, namely, to proceed by a writ of quo warranto.'" (Italics supplied)

The factual basis upon which the plaintiffs urge the removal of the defendants from their offices, and upon which they base the alleged threat of the loss of plaintiffs' property rights, consists of testimony to the effect that the defendants in concert with others have attempted to change the By-Laws and Articles of Association so as to limit membership in the Credit Union available to individuals who are members of the Clerks Union. Since more than 90 per cent of the members of the Credit Union are members of the Clerks Union, it may be accepted as a fact that this is the preference and purpose of the preponderant majority of the members of the Credit Union. Plaintiffs regard this purpose and actions directed towards its fulfillment as an unlawful conspiracy. In this plaintiffs mistake the purpose and object of the Credit Union. It was never intended to be a pawn in the hands of Local 89. Both the Act of 1933, (Act of May 26,

1933, P. L. 1076, 15 P.S. 201) and the by-laws make it clear that the purpose of the Credit Union is not to serve the interest of Local 89, the Clerks Union or any other Union. The purpose of the Credit Union is to serve the interests of the members of the Credit Union by "promoting thrift among its members and creating a source of credit for them", Act of 1933, May 26, P. L. 1076, Sec. 1.

At the time the case was tried before us, there were 1679 members in the Credit Union of whom plaintiffs admit that no more than 48 were members of Local 89. 1519 members belonged to the Clerks Union and the remainder of the membership consisted of persons who were either retired or not affiliated with either Local 89 or the Clerks Union. The status of these members has not been put in issue in this proceeding. In effect, the plaintiffs' position in this regard is that since 90 per cent or more of the members of the Credit Union have joined the Clerks Union, they are no longer "members" of the Credit Union and that the only members of the Credit Union are the 40-odd loyal members of Local 89.[2] With this we cannot agree.

The more than 1500 members of the Credit Union who once belonged to Local 89 and who apparently fulfilled all the requirements for membership at the time they became members of the Credit Union have never been expelled or suspended from the Credit Union. Neither the By-Laws nor the Articles of Association contain any provision for sus-

[2] A statement made on behalf of plaintiffs at the April 27, 1961 meeting contains the following:

"(a) Under the provisions of Article II, Section 1 of the By-Laws, only members in good standing of Local Union No. 89, National Federation of Post Office Clerks, may be members of the Credit Union. The present officers and directors of the Credit Union are ont members in good standing of Local 89, and are therefore serving illegally.

"(b) Under the provisions of Article III, Section 4, a quorum is composed of at least twenty members. Since there are not that many members of Local 89 present, the meeting must be postponed."

pension or expulsion by reason of membership or non-membership in Local 89 or any other trade union.

Article II of the By-Laws contains the provision that "a member may be expelled from membership in the corporation in the manner by law provided." The applicable statute (Act of 1933, May 26, P. L. 1076, Section 18) provides:

> A member may be expelled by a two-thirds' vote of the members present at a regular or a special meeting called to consider the matter, but only after a hearing after due notice to the member of the time and place of the meeting and of the reason or reasons for such proposed expulsion. P. 118.

No vote or other action was taken at any meeting of the Credit Union to expel the defendants or the other Credit Union members who are also members of the Clerks Union. The plaintiffs apparently rely also on Article II, Section 6, which provides as follows:

> "Section 6. A member who leaves the *sphere of operation* of the corporation may retain his shares of stock but may not become a borrower, endorser or guarantor on any loan and may not be an officer, director or member of any committee." (Italics supplied)

Question: Does a member who changes his labor union affiliation "leave the sphere of operation" of the Credit Union or otherwise lose his right to participate? The by-laws of the Credit Union do not say so, and we do not think that this Court is authorized to change the by-laws to read thusly. What is the "sphere of operations" of the corporation? The most obvious answer would seem to be the "Postal District of Philadelphia", the place of employment of all the members of the Credit Union, and the geographical area within which the Credit Union operates. In addition, we could not under any circumstances determine the membership status of individuals who are not joined as parties to

this action, *Milasinovich v. Serbian Progressive Club*, 369 Pa. 26 (1951). It certainly can not be clearly equated with "Local 89."

In connection with the interpretation actually sought by plaintiffs, we are mindful that what the plaintiffs contend for is a forfeiture of the defendants' right by reason of a change in their labor union affiliation.

Equity abhors a forfeiture. *Brown v. Vandergrift*, 80 Pa. 142, 148. "Forfeitures are odious in the law and are enforced only where there is the clearest evidence that this is what was meant by the stipulation of the parties." *Helm v. Philadelphia Life Insurance Company*, 61 Pa. 107-111.

"A forfeiture of membership in a corporation will be without force or effect unless it is declared by the proper authority in the proper manner." *Harmstead v. Washington Fire Co.*, 8 Phila. 331, 28 P.I. 404. We have been unable to find any case *upholding the automatic expulsion* of a member from a "stock" or "money" corporation or even from a club or social organization in corporate form. "The power of expelling a member from a corporation *belongs only to the society at large*, unless the Charter or some By-Law founded on it, transfers the power to a select few." (Italics supplied) *Hassler v. Philadelphia Musical Organization*, 14 Phila. 233. A Court of Equity should not substitute itself as the agency to expel members of a corporation, even in a case in which the "society at large" would have a clear right to expel. The proper forum in which to try offenders against corporate rules is an appropriately summoned meeting of the organization whose rules are allegedly broken.

It is a well established rule that Courts of Equity are loathe to interfere in the internal affairs of corporations or other organizations. The rule was stated in *Hassler v. Philadelphia Musical Association*, 14 Philadelphia Report 235, as follows:

> "While it is true that the courts possess a general equity jurisdiction for the supervision and control of private corporations, they will nevertheless, in such

a case, look at the proceedings only so far as to see that they are regular; that the corporate body had jurisdiction of the case, and that there has been no abuse of power. The only functions of the courts in such cases is to keep such tribunals in the line of order and to prevent abuses. If the proceeding is open to impeachment upon these grounds, they will interfere. If not, they will leave the member to the judgment of his associates, to the constitution and laws by which he has consented to be bound, and this whether the remedy sought be in equity, by action, or by the writ of *mandamus*." (Italics supplied)

In *Harmstead v. Washington Fire Company*, supra, decided in 1871, Judge Finletter succinctly reviewed the principles herein involved. In that case the by-laws provided that "Any member who may join any other company, shall forfeit his rights of membership." The plaintiff admittedly violated the rule, but no action was taken against him by the membership. When the defendants commenced to wind up the affairs of the Company and divide the effects of the Company among the members, they attempted to exclude the plaintiff from participation therein. An injunction was granted to the plaintiff. The Court said, with respect to the fact that the corporate body as a whole did not act:

> "Even if the provision was in full force, the action of the Company with notice to him was necessary to make it effective against his rights. The forfeiture of membership must be declared by the proper authority, and in the proper manner, otherwise it is without force or effect."

For several hundred years the Pennsylvania Courts have zealously protected corporate stockholders' rights even when valuable property rights were not involved. Expulsion or disenfranchisement may affect a serious loss of status and in the case of a cooperative business corporation, such as a

Credit Union, the loss of membership rights may have serious economic consequences. In *Beck v. Philadelphia Club*, 50 Pa. 107, 119 (1865), the Court said:

> "Proceedings to disenfranchise shall be strictly construed . . . Nothing but an express power in the charter can authorize a money corporation to throw overboard one of its members."

This rule of law is not peculiar to Pennsylvania. It is stated as follows in 13 American Jurisprudence, Sec. 405, P. 459.

> "A corporation organized for pecuniary profit appears to have no power, merely as an incident to its incorporation, to expel a member or to declare a forfeiture of its stock even for non payment of assessment thereon. Forfeiture and the sale of shares of stock owned by delinquent stock holders do not constitute a common law remedy and can be effected only when expressly authorized by some statute. A corporation may not adopt a by-law imposing the forfeiture of stock of goods or of other corporate interest as a penalty for its breach unless the power to pass such by-law is expressly granted by the Charter. A different rule prevails, however, in regard to the expulsion of members of non-profit or nonstock corporations, organizations and societies. Such associations possess inherent powers to expel members for good cause, and *upon due opportunity for hearing and defense* . . ." (Italics supplied.)

Aside from the other considerations here presented the legality of a provision in the by-laws of this corporation such as plaintiffs seek to insert by interpretation, even if clearly expressed, would be unenforceable in a court of equity.

It appears clear that the members of the Credit Union are employed in interstate commerce. It is expressed public

policy of the United States to encourage "full freedom of association" among employees engaged in interstate commerce. Both the Labor Management Relations Act of 1947 [5] (The Taft-Hartley Law) and the Labor Management Reporting and Disclosure Act of 1959 [6] are designed to encourage among employees "the right to meet and assemble freely". A provision in a credit union charter or by-law which would require continued affiliation with any specific labor union under penalty of a loss of important property rights would appear to offend the policy announced by the Congress of the United States. It is obviously inconsistent with Title I, Section 101 of the Act of 1947 (29 U.S.C.A. §151) in which "it is hereby declared to be the policy of the United States to eliminate the causes of . . . obstructions to the free flow of commerce . . . by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing . . ."

In *Spayd v. Ringing Rock Lodge*, 270 Pa. 67 (1921), the facts closely paralleled the case at bar. In the *Spayd* case a by-law of the Brotherhood of Railroad Trainmen

[5] Section 7 of the Act of 1947 (Title 29, U.S.C.A.) provides:

"Sec. 7. Employees shall have the right to self-organization, to form, join or assist labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8(a)(3)."

[6] Section 101(a)(3) of Act of 1959 provides:

"(3). No member of any labor organization may be fined, suspended, expelled or otherwise disciplined except for nonpayment of dues by such organization or by any officer thereof unless such member has been (a) served with written specific charges; (b) given a reasonable time to prepare his defense; (c) afforded a full and fair hearing."

forbade, under penalty of expulsion, "any member of the Brotherhood using his influence to defeat any action . . . taken by the National Legislative Representative of the Brotherhood. The plaintiff was expelled because he signed a petition for legislation in violation of the rule. He was adjudged guilty and expelled. In directing his reinstatement, the Court said:

> "We have often said that the by-laws, rules and regulations of these artifical bodies will be enforced only when they are reasonable, and they never can be adjudged reasonable when, as here, they would compel the citizen to lose his property rights in accumulated assets, or forego the exercise of other rights which are constitutionally inviolable. Defendant Lodge is part of a beneficial organization, and there is a finding that plaintiff has a substantial property interest therein; under these circumstances, it will not do to say that he can freely regain full liberty of action, at any time, by disassociating himself from the order; but, even if he could, the rule, as construed by defendants, would still be discountenanced, and void in law." (P. 70).

The plaintiff's testimony that the individual defendants and other members of the Credit Union have attempted to change the Credit Union's by-laws and charter is of little consequence in this case. It appears that the notice of the meeting of December 28, 1958, was inadequate with respect to changing the Articles of Association. However, the amendments have not been put into effect and the defendants recognize that they cannot be made effective until approved by the Secretary of Banking. Nor is it likely that the amendments will ever be perfected. Surely we should not anticipate that the Secretary of Banking would approve amendments unless they conform to statutory requirements. A new and more reasonable series of amendments to the By-Laws and Articles of Association of the Credit Union were

proposed and adopted at a meeting held on April 27, 1961.[7] These amendments provide that membership in the Credit Union shall be limited to members of both Local 89 and the Clerks Union; and changes the name of the Credit Union to "Federation Credit Union".

In any event, the omission of the formalities in the attempted adoption of amendments to by-laws and the charter

[7] The parties have stipulated that the following amendments were adopted by a majority of those present at this meeting of the Credit Union, held after the required notice was given:

"1. An amendment to Paragraph 1 of the Articles of Association which had read: 'The name of the proposed Credit Union is Federation Credit Union Local No. 89, N.F.P.O.C.' to read as follows: 'The name of the proposed Credit Union is Federation Credit Union.'

"2. An amendment to Paragraph 8 of the Articles of Association which had read: 'The membership of the said Credit Union will be limited to members in good standing of Local Union No. 89, National Federation of Post Office Clerks in the Postal District of Philadelphia, Pa.' to read as follows: 'The membership of the said Credit Union will be limited to the members in good standing in Local No. 89, National Federation of Post Office Clerks and to members in good standing of the Philadelphia Post Office Clerks Union in the Postal District of Philadelphia, Pennsylvania.'

"3. An amendment to Article I—NAME—Section 1 of the By-Laws which had read: 'This corporation shall be known as the Federation Credit Union Local No. 89, N.F.P.O.C.' to read as follows: 'This corporation shall be known as the Federation Credit Union.'

"4. An amendment to Article II—MEMBERSHIP—Section 1 of the By-Laws, which had read: 'Membership in this Credit Union is limited to the members in good standing of Local Union No. 89, National Federation of Post Office Clerks in the Postal District of Philadelphia, Pa., upon subscribing for one or more shares and paying for the same in whole or in part' to read as follows: 'The membership of this corporation shall be limited to such persons and associations as set forth in the Articles of Association filed in the Office of the Secretary of the Commonwealth of Pennsylvania. A member of this corporation is any person or association having the equivalent of one or more shares of capital stock of the corporation standing to his or its credit.'"

on December 28, 1958, does not constitute a basis for intervention by a Court of Equity. Accordingly, we make the following:

FINDINGS OF FACT

1. Under date of January 26, 1934, application was made by several individuals under the Act of Assembly of Pennsylvania No. 260, approved May 26, 1933, P. L. 1076 for incorporation and issuance of Letters Patent to Credit Unions.

2. The application, in Section 8 thereof, provided as follows:

> "8th: The membership of the said CREDIT UNION will be limited to members in good standing of Local Union #89, National Federation of Post Office Clerks in the Postal District of Philadelphia, Pa."

3. On February 23, 1934, the Secretary of Banking certified that the Articles of Association of the Federation Credit Union Local #89, N.F.P.O.C., (herein called "Credit Union") were in compliance with the Act of Assembly No. 260, approved May 26, A.D. 1933, and the issuance of Letters Patent was approved.

4. On February 26, 1934, the aforesaid application for Letters Patent was approved by the Governor of Pennsylvania, who directed that Letters Patent issue according to law.

5. Letters Patent were issued to Federation Credit Union Local #89, N.F.P.O.C., under date of February 26, 1934.

6. Local Union No. 89, National Federation of Post Office Clerks, AFL-CIO (hereinafter referred to as "Local 89") is functioning as an unincorporated labor union.

7. Local 89 is governed by a Constitution, Article III, Section 1, which section reads as follows:

"Section 1. Any person in the classified civil service of the Post Office Department who is designated as a Post Office Clerk or Substitute Clerk or other postal employee not exercising supervisorial authority or eligible to membership in an organization affiliated with the American Federation of Labor-Congress of Industrial Organizations shall be eligible to membership, except any person who is a member of any other Post Office Clerks' organization whose ostensible aims are identical with those of the National Federation of Post Office Clerks."

8. The individual defendants are members of an organization known as the "Philadelphia Post Office Clerks Union", (hereinafter referred to as "Clerks Union"), whose aims are identical with those of Local No. 89.

9. Plaintiff's are members in good standing of Local 89 in the Postal District of Philadelphia, Pennsylvania, and are members of the shareholders of the Credit Union.

10. Prior to December of 1958, the individual defendants were members in good standing of Local Union No. 89.

11. On or about December 18, 1958, the defendant, Morris Geller, posted a notice of a meeting to consider and act upon amendments to the By-Laws of the Credit Union. The notice read as follows:

"December 18, 1958

"SPECIAL NOTICE—SPECIAL NOTICE"
"FEDERATION CREDIT UNION, LOCAL #89,
N.F.P.O.C., MEMBERS"

"You are hereby notified that President Adolph A. Neubauer, in accordance with BY-LAWS ARTICLE 3, SECTION 2, is calling a SPECIAL MEETING OF THE MEMBERSHIP OF THE FEDERATION CREDIT

UNION, LOCAL # 89, N.F.P.O.C., to be held SUNDAY, DECEMBER 28, 1958, at 4:00 P. M. at the MAJESTIC HOTEL, BROAD STREET at GIRARD AVENUE, PHILADELPHIA 22, PA., to consider and act upon the following amendments in the By-Laws.

"ARTICLE 1, SECTION 1

"*Delete:* Federation Credit Union #89, N.F.P.O.C.

"*Insert in its place:* PHILADELPHIA POST OFFICE CLERKS CREDIT UNION

"ARTICLE 2, SECTION 1

"*Delete:* #89, National Federation of Post Office Clerks

"*Insert in its place:* PHILADELPHIA POST OFFICE CLERKS UNION

"Fraternally yours,

Morris Geller, Clerk-Treas."

12. On December 28, 1958, a duly constituted meeting of the Federation Credit Union Local #89, N.F.P.O.C., was held. The meeting at which more than the necessary quorum were present, was attended by approximately two hundred members out of a total of sixteen hundred members, and at said meeting the proposed amendments to the By-Laws were approved, with only three members voting against said approval.

13. On December 28, 1958, at a meeting participated in by the individual defendants, a resolution was adopted, whereby the individual defendants and others disaffiliated from the National Federation of Post Office Clerks, AFL-CIO.

14. Since December 31, 1958, none of the individual defendants have been members of Local Union No. 89, but are members of the Philadelphia Post Office Clerks Union.

15. The amendments to the Articles of Association and to the By-Laws above referred to, as aforesaid, have not been approved by the Secretary of Banking.

16. The individual defendants have continued to operate as officers and committeemen of the said Credit Union, although they are not members in good standing of Local Union No. 89, and there has been on change in the name or objectives of the Federation Credit Union Local =89, N.F.P.O.C.

17. None of the members of the Clerks Union have been expelled, suspended or disciplined by the Credit Union because of affiliatons with the Clerks Union.

18. The amendments referred to in Paragraph 12 have not been made operative by the officers of the Credit Union. All members of Local 89 have been permitted to retain their membership in the Credit Union and fully to exercise their membership rights.

19. The money and assets of the Credit Union have at all times been retained in the name of The Federation Credit Union Local =89, N.F.P.O.C.

20. In the operation of the Credit Union's business, the defendants have made no attempt to change the name, stationery, checks of bank accounts and have at all times employed the name "Federation Credit Union, Local =89."

21. On April 27, 1961, at a duly convened meeting for this purpose of the Credit Union, and at which a quorum was present, the membership, by majorities of more than seventy-five per cent, adopted the following amendments:

"1. An amendment to Paragraph 1 of the Articles of Association which had read: 'The name of the proposed Credit Union is Federation Credit Union Local No. 89, N.F.P.O.C.' to read as follows: 'The name of the proposed Credit Union is Federation Credit Union.'

"2. An amendment to Paragraph 8 of the Articles of Association which had read: 'The membership of the said Credit Union will be limited to members in good standing of Local Union No. 89, National Federation of Post Office Clerks in the Postal District of Philadelphia, Pa. 'to read as follows: 'The membership of the said Credit Union will be limited to members in good standing of Local No. 89, National Federation of Post Office Clerks and to members in good standing of the Philadelphia Post Office Clerks Union in the Postal District of Philadelphia, Pa.'

"3. An amendment to Article I—NAME—Section 1 of the By-Laws which had read: 'This corporation shall be known as the Federation Credit Union Local No. 89, N.F.P.O.C.' to read as follows: 'This corporation shall be known as the Federation Credit Union.'

"4. An amendment to Article II—MEMBERSHIP—Section 1 of the By-Laws, which had read: 'Membership in this Credit Union is limited to members in good standing of Local Union No. 89, National Federation of Post Office Clerks in the Postal District of Philadelphia, Pa. upon subscribing for one or more shares and paying for the same in whole or or in part' to read as follows: 'The membership of this corporation shall be limited to such persons and Associations as set forth in the Articles of Association filed in the office of the Secretary of the Commonwealth of Pennsylvania. A members of this corporation is any person or Association having the equivalent of one or more shares of capital stock of the corporation standing to his or its credit.' "

22. There are currently approximately more than 1500 members of said Credit Union who were but are not now members in good standing of Local Union No. 89. These members of the Credit Union are members of the Clerks

Union. The Credit Union grants loans to such individuals who are not members in good standing of Local No. 89.

23. Forty-eight members of Local Union No. 89 are members of the Federation Credit Union Local #89, N.F.P.O.C. at this time and more than 1500 members of the Credit Union were members of Local Union No. 89.

24. No loss of property of the members of the Credit Union has occurred or has been threatened by reason of the action of the officers or membership of the Credit Union.

25. None of the property of the members of the Credit Union has been improperly transferred, diverted or wasted.

26. All of the assets of the Credit Union are under the control of duly elected officers of the Credit Union.

CONCLUSIONS OF LAW

1. Federation Credit Union Local #89 N.F.P.O.C. is a duly constituted Credit Union incorporated under the Act of May 26, 1933, P. L. 1076.

2. The plaintiffs and all of the individual defendants are members of the Credit Union.

3. The amendments to the By-Laws and Articles of Association presented to the membership meeting on December 28, 1958, and adopted at that meeting, have not been approved by the Secretary of Banking and are not operative.

4. At a duly constituted meeting at which all of the requirements of the By-Laws and Articles of Association of the Credit Union, and all statutory requirements were met, the following resolutions were adopted:

"1. An amendment to Paragraph 1 of the Articles of Association which had read: 'The name of the proposed Credit Union is Federation Credit Union Local No. 89, N.F.P.O.C.' to read as follows: 'The name of the proposed Credit Union is Federation Credit Union.'

"2. An Amendment to Paragraph 8 of the Articles of Association which had read: 'The membership of the said Credit Union will be limited to members in good standing of Local No. 89, National Federation of Post Office Clerks in the Postal District of Philadelphia, Pa.' to read as follows: 'The membership of the said Credit Union will be limited to the members in good standing of Local No. 89, National Federation of Post Office Clerks and to members in good standing of the Philadelphia Post Office Clerks Union in the Postal District of Philadelphia, Pa.'

"3. An amendment to Article 1—NAME—Section 1 of the By-Laws which had read: 'This corporation shall be known as the Federation Credit Union Local No. 89, N.F.P.O.C.' to read as follows: 'This corporation shall be known as the Federation Credit Union.'

"4. An amendment to Article II—MEMBERSHIP—Section 1 of the By-Laws, which had read: 'Membership in this Credit Union is limited to the members in good standing of Local Union No. 89, National Federation of Post Office Clerks in the Postal District of Philadelphia, Pa., upon subscribing for one or more shares and paying for the same in whole or in part' to read as follows: 'The membership of this corporation hall be limited to such persons and Associations as set forth in the Articles of Association filed in the office of the Secretary of the Commonwealth of Pennsylvania. A member of this corporation is any person or Association having the equivalent of one or more shares of the capital stock of the corporation standing to his or its credit.' "

5. The amendments referred to in the preceding paragraph are entitled to receive the approval of the Secretary of Banking and upon such approval will become effective and operative.

6. The individual defendants have not been guilty of any improper conduct.

7. None of the property of the Credit Union has been wasted, diverted, or improperly transferred.

8. All of the assets of the Credit Union are under the control of duly elected officers of the Credit Union.

9. None of the members of the Credit Union had been expelled by reason of such members having become affiliated with or members in Philadelphia Post Office Clerks Union.

10. The Philadelphia Post Office Clerks Union (Clerks Union is a labor union which is a rival of Local 89, N.F.P. O.C. and which has objectives identical to that of Local 89.

11. Article II, Section 1 relates to initial admission to membership in the Credit Union and does not operate so as to dismiss automatically from membership members of the Credit Union who lose their status as members in good standing of Local 89.

12. No member entitled thereto has been denied any of his lawful rights in defendant Credit Union, nor has the conduct of the officers or the membership of the Credit Union, caused or threatened any loss to the Credit Union or the members thereof.

13. The action brought by the plaintiffs is essentially an action for the removal from office of the individual defendants and hence is not cognizable in a Court of Equity.

14. No other grounds for equitable relief have been presented or supported by evidence.

RAYMOND PACE ALEXANDER, *J.*

DECREE NISI

AND NOW, to wit, this 7th day of July, 1961, the within complaint is dismissed and a DECREE NISI is herewith entered for defendants.

The Prothonotary will give notice to the parties or to their counsel of the filing of this Adjudication and Decree Nisi; and further, that unless exceptions are filed thereto within twenty (20) days from the date of filing hereof, the Adjudication will become final and Final Decree entered on Praecipe filed.

RAYMOND PACE ALEXANDER, *J.*

Opinion sur Exceptions to Adjudication

PER CURIAM April 3, 1962

This matter is before the court upon plaintiffs' exceptions to the adjudication of the Chancellor. Argument and reargument have been heard by the Court en Banc and various briefs have been filed by counsel.

Plaintiffs are members and former officers of defendant credit union. Defendant credit union was organized in 1934 under an act of the General Assembly providing for the establishment of credit unions in this Commonwealth: Act of May 26, 1933, P. L. 1076, 14 P.S. 201 et seq. The individual defendants took over the control and management of defendant credit union in December, 1958, after first disaffiliating themselves from Local Union #89, National Federation of Post Office Clerks, AFL-CIO, although purporting to retain their membership in the defendant credit union. They thereupon formed a rival union, the Philadelphia Post Office Clerks Union, as set forth infra, and have continued to control and manage the credit union to the present.

On February 26, 1934, the Governor of Pennsylvania issued Letters Patent to the Federation Credit Union Local #89, National Federation of Post Office Clerks. The Letters Patent provided as follows:

> "The membership of the said credit union will be limited to members in good standing of Local Union No. 89, National Federation of Post Office Clerks in the Postal District of Philadelphia, Pennsylvania."

Defendant credit union has operated continuously since 1934. Its current By-Laws were adopted on September 1, 1957, and provide that membership in the credit union is limited to members in good standing of Local Union #89, N.F.P.O.C., and that a member of the credit union who leaves the "sphere of operation of the corporation" may retain his shares, but may not become a borrower, officer, director or committee member of the credit union. *By-Laws* of September 1, 1957, Article II, Secs. 1 & 6.

Section 204 of the Act of 1933, supra, 14 P.S. 204, provides that "credit union organizations shall be limited to groups . . . having a common bond of association by reason of occupation within a well defined neighborhood, community, or rural district."

Section 202 (E) of the Act, supra, 14 P.S. 202 (E), provides that amendments to the articles of association of credit unions may be considered at regular or special meetings of the members, approved by three-fourths of those present provided that a quorum of the membership is in attendance, that amendments be filed with the Secretary of Banking who, if he approves them, shall forward them to the Secretary of State for recording and issuance of a new certificate of incorporation which includes such amendments.

Section 203 of the Act, supra, 14 P.S. 203, provides in part, as follows:

> ". . . To make, amend, and alter by-laws, not inconsistent with law, for the regulation of its affairs and the conduct and management of the credit union. By-laws so made, amended or altered shall not be operative, however, until approved by the Department of Banking . . .".

As stated in the Letters Patent, supra, the membership of the credit union is limited to members in good standing of Local Union #89, National Federation of Post Office Clerks, employed in the Philadelphia postal district. This limitation is in accordance with Section 204 of the Act of 1933, supra.

Article III, Section 1 of the constitution of Local Union #89, N.F.P.O.C., provides in regard to membership as follows:

> "Any person in the classified civil service of the Post Office Department who is designated as a Post Office Clerk or Substitute Clerk . . . shall be eligible to membership, except any person who is a member of any other Post Office Clerks' Organization whose ostensible aims are identical with those of the National Federation of Post Office Clerks."

The record establishes that on December 28, 1958, the individual defendants disaffiliated themselves from Local Union #89, N.F.P.O.C. Prior to that date, the individual defendants had been officers of the credit union and were members in good standing of Local Union #89. Subsequently, they organized and became members of the Philadelphia Post Office Clerks Union, an organization whose aims and purposes are identical with the aims and purposes of Local Union #89, N.F.P.O.C. The disaffiliation of the individual defendants from Local Union #89 occurred at a meeting held at 2 o'clock P. M., on December 28, 1958. Thereafter, at 4 o'clock P. M., on December 28, 1958, pursuant to a notice of a special meeting of the credit union which was posted on December 18, 1958, the individual defendants and others who had disaffiliated from Local Union #89, voted in favor of amending the By-Laws of the defendant credit union by changing its name from Federation Credit Union Local #89, N.F.P.O.C., to Philadelphia Post Office Clerks Credit Union, thereby attempting to make the credit union an organ of the newly formed Philadelphia Post Office Clerks Union.

With reference to this attempted amendment of the name of the credit union, the Chancellor stated as follows at Page 3 of the adjudication:

> "Both the By-Laws of the Credit Union and the Act of 1933 provide that no amendment to the By-

Laws or Articles of Association can become effective until approved by the Secretary of Banking. It is conceded that although the application for approval by the Secretary of Banking has been made, the approval has not been received. We must therefore regard the attempted amendments a nullity." (Footnotes omitted)

At the special meeting of the credit union on December 28, 1958, approximately 200 disaffiliated members of the union, Local Union #89, voted in favor of the proposed amendment to change the name of the credit union. Three members of the credit union voted against said amendment. The total membership of the credit union at that time, including the newly disaffiliated members of Local Union #89, was approximately 1600.

In light of the sequence of events of December 28, 1958, it is clear that those who voted to amend the name of the credit union were not members of the credit union as defined and set forth in the Articles of Association and By-Laws of the credit union. *Letters Patent*, supra; *By-Laws*, Article II, Section 1, supra.

Since their disaffiliation from Local Union #89 and their attempted amendment of the By-Laws of the credit union, the individual defendants have controlled the assets and records of the credit union. They have granted loans to individuals who are not members in good standing of Local Union #89, by virtue of their disaffiliation from that union. Such loans are contrary to the provisions of Article II, Section 6 of the By-Laws, supra.

A stipulation of counsel, dated June 1, 1961, establishes the following additional facts:

A special purported meeting of the credit union was scheduled and conducted by the individual defendants who, as stated, have controlled the affairs of the credit union since December 28, 1958, on April 27, 1961. The purpose of that purported meeting was to amend the By-Laws and Articles of Association of the credit union. Plaintiffs objected to the proposed actions by the individual defendants on

the ground that they were not members in good standing of Local Union #89 as required by the By-Laws of the credit union, supra. Plaintiffs' objection was overruled and a vote of those present purportedly approved the proposed amendments to change the name of the credit union to Federation Credit Union and to permit membership in the credit union to include members in good standing of Local Union #89 and members in good standing of the Philadelphia Post Office Clerks Union.

Plaintiffs' present action seeks equitable relief against the individual defendants and those acting in concert with them, who have taken over the control and management of the credit union. Their action is grounded upon the provisions of the Act of 1933, supra, and the Articles of Association and By-Laws of the credit union, supra. It is their contention that the individual defendants have acted unlawfully, without authority and contrary to the stated objectives of the credit union.

The defendants argue that they had a right, as members of the credit union, regardless of their disaffiliation with Local Union #89, to take over the management of the credit union and to continue to act as members and officers of the credit union. They argue that the purported amendments of April 27, 1961, changing the name and membership requirements of the credit union, were properly adopted and are valid.

In the adjudication, the Chancellor concluded that the proposed amendments of April 27, 1961, were entitled to receive the approval of the Secretary of Banking of the Commonwealth and that the plaintiffs' action is essentially an action for the removal from office of the individual defendants. On this basis, the Chancellor concluded that plaintiffs could not be afforded relief in equity, but that their cause of action should be brought in quo warranto for the removal of the defendants from office.

Accordingly, the Chancellor entered a Decree Nisi dismissing the plaintiffs' complaint. Thereafter, plaintiffs' exceptions to the adjudication were duly filed.

The crux of plaintiffs' argument in support of their exceptions is that equity does have jurisdiction in this matter, that the purported amendments by the defendants and other disaffiliated members of Local Union #89 of the Articles or By-Laws of the credit union are a nullity, that they have no adequate remedy at law and that defendants have acted without authority and contrary to the applicable law and should be restrained therefrom.

The record is clear that the attempted amendments to the Articles and By-Laws of the credit union were approved by the votes of individuals who were no longer members of Local Union #89, they having disaffiliated themselves from Local Union #89 on December 28, 1958, in favor of membership in the Philadelphia Post Office Clerks Union. Therefore, under the Act of 1933, the Articles of Association of the credit union and its By-Laws, such attempted amendments are clearly a nullity.

Defendants argue that the Chancellor's analysis of the case is correct in that plaintiffs failed to state an action in which equity could grant relief, that the amendments of the Articles and By-Laws of April 27, 1961, were lawfully adopted and that the basic purpose of the credit union remains unchanged.

First, upon careful study and consideration of the applicable law, this court must conclude that equity has jurisdiction in this case and may properly grant the relief prayed for by plaintiffs. Furthermore, it must be concluded that the defendants acted without authority, contrary to the applicable law and must be restrained from any further management and control of the credit union.

In regard to the issue of equity's jurisdiction in this case, we conclude that *Moosic Lakes Club v. Gorski*, 402 Pa. 640 (1961) is controlling. It should be noted that the *Moosic* case was not cited to the court until after the adjudication had been filed by the Chancellor. That case fully supports plaintiffs' theory in this matter and their arguments in support thereof.

In the *Moosic* case, supra, a non-profit corporation was formed, known as the Moosic Lakes Club, to help promote the development of real estate in a previously undeveloped area in Lackawanna County. The owners and developers of the land gave two lakes, the beach areas of the lakes and other recreation areas to the Moosic Lakes Club. The land was subdivided into lots and the unsold lots were held for sale by Moosic Lakes, Inc., a business corporation controlled by the owners and developers of the area. Any purchaser of a lot would have to join the Moosic Lakes Club in order to enjoy the recreation facilities which the owners and developers had given to the Club.

The By-Laws of the Club provided that the purchasers of lots would have one vote per lot and that the owners and developers of the land would be entitled to one vote for each unsold lot in the development. The lots were laid out on maps which the owners and developers kept on file in their office. In this way, the owners and developers were to keep control of the Club until such time when the number of purchasers outnumbered the number of unsold lots in the development. Also, the By-Laws provided that the Board of Directors of the Club should consist of three members, one to be chosen by the purchasers and the other two to be appointed by the owners and developers so long as there were unsold lots in the development. The By-Laws also provided that the Club officers were to be elected by the Board of Directors.

The purchase members of the Club became dissatisfied with the control of the Club by the owners and developers. Of course, the control by the owners and developers was due to the fact that the number of unsold lots exceeded the number of purchased lots. The purchasers attempted to change this control by amending the By-Laws at a special meeting of the membership at which they refused to recognize the votes of the owners and developers. They effected their control and took over the affairs of the Club. The complaint in equity was then filed asking for the return of the books and records of the Club.

The Supreme Court in affirming the action of the Chancellor who granted the relief requested by the plaintiff, stated as follows in regard to facts of that case and the issue of jurisdiction:

> "The whole scheme was a rather bald device to throw out the company and to wreck its influence in the Club."

> "For the same reason we put aside the contention that the election of new officers should be challenged only by an action in quo warranto. That might be true, under cases with facts like those in *Cella v. Davidson*, 304 Pa. 389 (1931), 156 A. 99, but *Siranovich v. Batkovich*, 359 Pa. 134 (1948), 58 A. 2d 461, suggests differently when the election of officers is purely incidental to the main stream of the case. That is so here, the election being only one factor in breaking the company's control over the Club. See also *Milasinovich v. Serbian Progressive Club*, 369 Pa. 26 (1951), 84 A. 2d 571."

> "It is as plain as a pikestaff that the meeting of June 1st was illegally called and illegaly held, and hence that the new by-laws, whether called amendments or substitutions after repeal, are void."

In the case at bar, it is clear that the election of officers by the disaffiliated members of Local Union #89 is likewise, merely an incidental act to the defendants' control and management of the credit union. Since when the defendants took over the control and management of the credit union, they were no longer members in good standing of Local Union #89, due to their affirmative acts of disaffiliation on December 28, 1958, the meetings in which they attempted to amend the By-Laws and Articles of Association of the credit union were likewise, "illegally called and illegally held," and the attempted amendments are void.

In this case, the defendants have approved loans of money to individuals who are not entitled to receive loans

under the By-Laws of the credit union, that is, they have permitted loans to members of the Philadelphia Post Office Clerks Union. See *By-Laws*, Article II, Section 6. In the *Milasinovich* case, supra, the Supreme Court held that a court of equity has jurisdiction to effectuate and prevent the unlawful use of assets of a non-profit corporation. Likewise, it has been held that equity may enjoin a tortious conspiracy affecting property rights. *Benjamin v. Foidl*, 379 Pa. 540, 543 (1954).

Defendants' contention that the *Moosic Lakes Club* case, supra, is distinguishable from this case is without merit. The defendants have acted wholly without authority under the By-Laws and Articles of Association of the credit union. Accordingly, their actions are void and equitable relief is appropriate under the *Moosic* case. For the same reasons, *Bagley v. Reno Oil Co.*, 201 Pa. 78 (1902) is obviously distinguishable from the facts of this case and cannot be applied here. The standing of the stockholders as to their voting rights was not in issue in *Bagley*, supra, whereas in this case, defendants were completely lacking any authority to vote upon amendments, having disaffiliated from Local Union #89. The *Bagley* case, supra, affirms the rule of majority control in corporate matters, provided that proper notice of matters to be voted upon has been given to all stockholders. In this case, defendants' disaffiliation from Local Union #89 caused their subsequent acts to be void. They no longer had standing as members of the credit union after disaffiliation.

Plaintiffs' argument that defendants have sought to change the organic purpose of the credit union must likewise be affirmed. Defendants have taken control of the credit union and its assets contrary to the applicable law, the Articles of Association and By-Laws. Moreover, they have attempted to unlawfully to change the purpose for which the credit union was chartered and seeks to transfer its funds and property to the Federation Credit Union, the proposed new name of the credit union.

Furthermore, in light of the authorities, supra, it is clear that plaintiffs have no adequate remedy at law and that equity's jurisdiction and powers are applicable in this dispute.

Accordingly, plaintiffs' exceptions to the adjudication of the Chancellor are sustained and we make the following

FINDINGS OF FACT

1. Federation Credit Union Local #89, N.F.P.O.C., is duly organized under the Act of May 26, 1933, P.L. 1070, 14 P.S. 201 et seq., as an incorporated credit union with its membership "limited to members in good standing of Local Union #89, National Federation of Post Office Clerks in the Postal District of Philadelphia, Pennsylvania." (Letters Patent, supra)

2. Section 204 of the Act, supra, provides in part that, "Credit union organizations shall be limited to groups of both large and small membership having a common bond of association by reason of occupation within a well defined neighborhood, community or rural district."

3. Under the date of September 1, 1957, in accordance with the Act, supra, the Federation Credit Union Local #89, N.F.P.O.C., adopted its most recent By-Laws for its government.

4. In accordance with the provisions of the Act, supra, regulating membership, the By-Laws of the said credit union provide in Article II, Section 1, as follows:

> "Membership in this credit union is limited to the members in good standing of Local Union #89, National Federation of Post Office Clerks in the Postal District of Philadelphia, upon subscribing for one or more shares and paying for the same in whole or in part."

5. Article II, Section 6 of the By-Laws of the said credit union provides:

"A member who leaves the sphere of operation of the corporation may retain his shares of stock but may not become a borrower, endorser or guarantor on any loan and may not be an officer, director or member of any committee."

6. Local Union #89, N.F.P.O.C., is affiliated with the National Federation of Post Office Clerks, AFL-CIO.

7. The individual defendants are no longer affiliated with or members of Local Union #89, N.F.P.O.C., but are members of an organization known as the Philadelphia Post Office Clerks Union, whose aims are identical with Local Union #89, N.F.P.O.C.

8. Article XIV of the By-Laws of the said credit union states in Section 1 as follows concerning amendments to the By-Laws:

"These by-laws may be amended at any regular or special meeting of members by a majority vote of the members present; provided, that notice of such meeting, containing a true copy of the proposed amendment, shall have been given as provided in these by-laws and such proposed amendment has been approved by the Secretary of Banking as by law provided."

9. Section 202(E) of the Act, supra, provides that amendments to Articles of Association of a credit union must be approved by three-quarters of the members present at a regular or special meeting at which the amendments are considered, provided that a quorum of the membership is present, that such amendments must be filed with the Secretary of Banking who, if he approves them will forward them to the Secretary of State, that the Secretary of the Commonwealth will then issue a new certificate of incorporation and record the articles of amendment and that such amendments must be forwarded by the corporation in the required form, together with a statement of facts establishing compliance with the law and affidavit in support thereof.

10. The individual defendants severed their affiliation with Local Union #89, N.F.P.O.C., at a meeting held at 2 o'clock P. M., on December 28, 1958.

11. On December 28, 1958, at 4 o'clock P. M., a meeting of the Federation Credit Union Local #89, N.F.P.O.C., was held, attended by approximately two hundred members out of a total of sixteen hundred members, and at said meeting the proposed amendments to the By-Laws were approved by a vote of all of those present except three members who voted against said approval.

12. There are currently members of the said credit union who are not members in good standing of Local Union #89, N.F.P.O.C., and the credit union grants loans to such individuals who are not members in good standing of Local Union #89.

13. The individual defendants have stated that their objective is to eventually bar all members of Local Union #89, N.F.P.O.C., from participating as members of the credit union.

14. The vote approving the proposed amendments to the By-Laws which was conducted on December 28, 1958, was made by individuals who were not members in good standing of Local Union #89, N.F.P.O.C.

15. At a special meeting of the credit union on April 27, 1961, proposed amendments to the Articles of Association and By-Laws of the credit union were approved by a vote of individuals who were not members in good standing of Local Union #89, N.F.P.O.C.

CONCLUSIONS OF LAW

1. This court has jurisdiction over all the parties and the subject matter of this suit.

2. Plaintiffs have no adequate remedy at law.

3. Plaintiffs have standing and capacity to sue.

4. All necessary parties to this litigation have been included as parties to this suit.

5. The nominal defendant, Federation Credit Union, Local #89, N.F.P.O.C., is, and remains, a cooperative society in the nature of a corporate entity, incorporated for the two-fold purpose of promoting thrift among its members and creating a source of credit for them, at legitimate rates of interest, for provident purposes, in accordance with the Act of May 26, 1933, P. L. 1076, 14 P.S. 201 et seq.

6. The By-Laws of the Federation Credit Union Local #89, N.F.P.O.C., AFL-CIO, adopted according to the aforesaid statute, constitute a valid contract which binds its members.

7. The individual defendants are ineligible under the law and under the Letters Patent to hold office in Local Union #89, National Federation of Post Office Clerks, AFL-CIO.

8. The operation of the credit union by the individual defendants and the control of its funds, assets and properties by the individual defendants without being members in good standing of Local Union #89, N.F.P.O.C., is unlawful.

9. The stated purpose of the individual defendants is to bar membership in the credit union to anyone who is not a member of the Philadelphia Post Office Clerks Union, thereby depriving without due process of law those who desire to continue their membership in Local Union #89, N.F.P.O.C., of their property rights in the credit union.

10. The individual defendants have a right to establish their own credit union, without unlawfully assuming and exercising control of the assets and business of the Federation Credit Union Local #89, N.F.P.O.C.

11. The attempts of the individual defendants to amend the Articles of Association and By-Laws of the Federation Credit Union Local #89, N.F.P.O.C., is con-

trary to the provisions of the Articles of Association and By-Laws, particularly Article XIV, of the said credit union, in that a true copy of the proposed amendments was never given and was never approved by the Secretary of Banking of the Commonwealth, as provided for by law.

12. The law provides that By-Laws that are amended or altered shall not become operative until approved by the Department of Banking of the Commonwealth, and such approval was never obtained.

13. The Articles of Association of the Federation Credit Union Local #89, N.F.P.O.C., have never been amended in accordance with the provisions of the Act, supra.

14. The individual defendants herein have at no time complied with the provisions of the law, either in regard to the By-Laws of the credit union, or the manner and method of amending the Articles of Association.

15. The individual defendants herein are attempting unlawfully to alter the organic purposes of the credit union, contrary to the provisions of the law.

16. The plaintiffs have suffered substantial and irreparable injuries and damages.

17. The plaintiffs are entitled to an accounting by the individual defendants of all receipts and dispursements made by them during their unlawful operation of the credit union.

18. The individual defendants are hereby enjoined from retaining any of the assets, books, records, papers, memoranda, letters, documents and the like of the credit union, and are hereby ordered to deliver said assets, books, records, papers, memoranda, letters, documents and the like to plaintiffs' attorney, Edward Davis, Esq., 215 South Broad Street, Philadelphia, Pennsylvania.

19. The individual defendants are hereby restrained from acting as officers, directors, or committee members of

the Federation Credit Union Local #89, N.F.P.O.C., as long as they are not members in good standing of Local Union #89, N.F.P.O.C., AFL-CIO.

20. Plaintiffs shall conduct a meeting of Federation Credit Union Local #89, N.F.P.O.C., called upon due notice to all members of the Federation Credit Union Local #89, N.F.P.O.C., who are members in good standing of Local Union #89, N.F.P.O.C., AFL-CIO, for the purpose of nominating officers, directors, and committee members of the credit union, nominations and eligibility to vote to be limited to members of the said credit union in accordance with its By-Laws, and the said attorney for the plaintiffs shall report thereon by letter to the court.

21. After the said election and report thereon to the court, the individual defendants herein are hereby ordered to account forthwith to the said officers of the Federation Credit Union Local #89, N.F.P.O.C., for all monies received and spent during their control and operation of the said credit union and said defendants shall fully cooperate with the said officer in explaining and reviewing the affairs and policies of said defendants during their control and operation of the said credit union.

22. The individual defendants are hereby enjoined from amending the Charter or By-Laws of the said credit union or from transferring the assets, books, records, papers, memoranda, letters, documents and the like of the credit union to any other credit union, individual or organization.

23. The court hereby renders a declaratory judgment that the Act of 1933, supra, pertaining to credit unions and the By-Laws and Articles of Association of the Federation Credit Union Local #89, N.F.P.O.C., established thereunder preclude the individual defendants from holding office in the said credit union, and from operating the said credit union, or using the assets of the said credit union in any manner whatsoever.

24. The individual defendants are hereby enjoined from using or attempting to use any documents, pass books, or accounts or similar paraphernalia bearing the name Federation Credit Union Local #89, N.F.P.O.C., AFL-CIO.

25. The principles of law governing this case can in no way be affected by the disaffiliation of defendants and others from Local Union #89, N.F.P.O.C., AFL-CIO, except insofar as stated herein, said disaffiliation having been the subject matter of the dispute in another case.

FINAL DECREE

AND NOW, to wit, this 3rd day of April, 1962, it is hereby Ordered, Adjudged and Decreed that plaintiffs' exceptions to the Adjudication of the Chancellor are sustained and a Final Decree is hereby entered in favor of plaintiffs and against defendants in accordance with this Opinion.

APPENDIX C

Section 7 of the Labor Management Relations Act of 1947 (29 U.S.C.A. §141):

Sec. 7. Employees shall have the right to self-organization, to form, join or assist labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8(a)(3).

Section 101(a)(3) of the Labor Management Reporting and Disclosure Act of 1959 (29 U.S.C.A. §411(a)(3):

(3) No member of any labor organization may be fined, suspended, expelled or otherwise disciplined except for non-payment of dues by such organization or by any officer thereof unless such member has been (a) served with written specific charges; (b) given a reasonable time to prepare his defense; (c) afforded a full and fair hearing.

APPENDIX D

Pennsylvania Credit Union Law of May 26, 1933, P. L. 1076, as amended May 18, 1937, P. L. 713:

Section 4 (14 P.S. §204):

Section 4. Membership.—Credit union membership shall consist of the incorporators and such other persons as may be elected from time to time to membership and who subscribe to at least one share of the capital stock and pay the initial installment thereon, together with the entrance fee. Organizations incorporated or otherwise composed principally of the same general group as the credit union membership may be members. Credit union organizations shall be limted to groups of both large and small membership having a common bond of associarton by reason of occupation within a well defined neighborhood, community, or rural district.

Section 5. (14 P.S. §205):

Section 5. Reports and Examinations.—Credit unions shall be under the supervison of the Department of Banking of the Commonwealth, and shall report to it as often as may be required by the Secretary of Banking, and at least annually, on blanks supplied by the said department for that purpose. Supplementary reports may be required by the secretary from time to time. Credit unions shall be examined as often as may be required by the Secretary of Banking, and at least annually, and the department may

use such other method of assuring itself of the conditon of the credit unions as it shall deem advisable. The cost of all such examinations and inspections shall be paid by the credit union. A credit union shall also pay annually its proportionate share of the overhead expense of the said Department of Banking, determined in the same way and manner as may be provided from time to time for banks or trust companies operating under the supervision of the department. For failure to file reports when due, unless excused for cause, a credit union shall pay to the Department of Banking five dollars ($5.00) for each day of its delinquency. If the department determines that the credit union is violating any of the provisions of this act, or is insolvent, the department may service notice on the credit union of its intention to revoke its certificate of approval; and if such violation continues, or such insolvency continues, for a period of fifteen days after the mailing of such notice, the department may revoke the certificate and take possession of the business and property of the credit union and retain possession until such time as it shall comply with the requirements of this act or until its affairs are finally liquidated. The department may take similar action if any report is not filled within a period of fifteen days after it is due.

Section 6 (14 P.S. §206):

Section 6. Fiscal Year; Meetings.—The fiscal year of all credit unions shall end December thirty-first of each year. Special meetings may be held in the manner indicated in the by-laws. At all meetings a member shall have but a single vote no matter what his share holdings may be. To amend the by-laws, the proposed amendment must be contained in the call for the meeting, and it must be approved by three-fourths of the members then present and shall be acted upon only in the event that a quorum of the members are present as provided in the by-laws. The proposed amendment shall not take effect until approved by the De-

partment of Banking. There shall be no voting by proxy. A member, other than a natural person, shall cast its single vote through an agent duly delegated and appointed as agent in writing.

Section 18 (14 P.S. §218):

Section 18. Expulsion and Withdrawal.—A member may be expelled by a two-thirds' vote of the members present at a regular or a special meeting called to consider the matter, but only after a hearing after due notice to the member of the time and place of the meeting and of the reason or reasons for such proposed expulsion. Any member may withdraw from the credit union at any time, but notice of withdrawal may be required. All amounts paid on shares of an expelled or withdrawing member, with any dividends accredited thereto to the date thereof, shall, as funds become available, and after deducting all amounts due from the member to the credit union, be paid to him. The credit union may require sixty days' notice of intention to withdraw shares. Withdrawing or expelled members shall have no further rights in the credit union, but they shall not by such withdrawal or expulsion be released from any remaining liability to the credit union. The shares of members shall be nontransferable.

Pennsylvania Department of Banking Code of May 15, 1933, P. L. 565, Section 202 (71 P.S. §733-202):

Section 202. General Scope of Supervison; Exercise of Discretion.—A. In addition to the powers and duties provided for in this act, the department shall exercise any power and fulfill any duty imposed upon it by any other law of this Commonwealth. Except where otherwise specifically provided, the department shall enforce and administer all laws of this Commonwealth which relate to any institution, and shall exercise such general supervision over institutions as will afford the greatest possible safety to depositors, other creditors, and shareholders thereof.

B. Whenever under this act, discretion is vested in the department as to whether, or the manner in which, to exercise a power or fulfill a duty, the department shall, after such examination or investigation as it shall deem appropriate under the circumstances, take such action as it deems to the best interests of the depositors, other creditors, and shareholders of such institution.

APPENDIX E

Brief amicus curiae, on behalf of the Secretary of Banking of the Commonwealth of Pennsylvania, submitted to the Supreme Court of Pennsylvania.

ARGUMENT

The Secretary of Banking of the Commonwealth of Pennsylvania submits this brief amicus curiae, not in an adversary capacity but by reason of his interest in the preservation and protection of the rights of all the original members in Federation Credit Union No. 89, regardless of your Honorable Court's decision on the merits of the case.

THE SECRETARY OF BANKING PROPERLY APPROVED THE AMENDMENTS TO THE ARTICLES OF ASSOCIATION OF THE FEDERATION CREDIT UNION NO. 89

Originally, membership in the Federation Credit Union was limited by its by-laws (Article II, Section 1) to members of Local Union No. 89, National Federation of Post Office Clerks in the Postal District of Philadelphia, Pennsylvania.

On December 28, 1958, a majority of the members of Local No. 89 voted to disaffiliate themselves from membership in said Labor Union and formed a new Labor Union. Thereupon at a special meeting of the Federation Credit Union No. 89, held later on the same day, the by-laws of the Credit Union were amended to change its name to Philadelphia Post Office Clerks Credit Union and to limit the membership therein to members of the new Labor Union. The effect of the latter amendments was to qualify the withdrawing members of the Union as members of the Credit Union, and to eliminate from membership in the credit union those members of Local No. 89 who had not affiliated themselves with the new union.

As required by the Act of May 26, 1933, P. L. 1076, Section 2 (14 P.S. 202E)[1] approval of the amendment was requested of the Secretary of Banking. On December 30, 1958, the Secretary of Banking notified the officers of the Credit Union that the proposed amendments could not be approved for the following reasons: First, the proposed change in name conflicted with similar names of other organizations then in existence; and secondly, the amendment with respect to qualification for membership could not be approved unless all members not transferring their Union affiliation to the new labor union would remain eligible for membership in the Credit Union.

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[1] "The articles of association may be amended by including the proposed amendments in the call for the regular or special meeting at which such amendments are to be considered. Amendments to the articles of association must be approved by three-fourths of the members present at the regular or special meeting at which the amendments are considered, and the proposed amendments shall be acted upon only in the event that a quorum of the members is present, as provided in the by-laws of the credit union. *Articles of amendment shall be filed with the Secretary of Banking who, if he approves the amendments, shall forward the articles of amendment to the Department of State.* The Secretary of the Commonwealth shall then issue a new certificate of incorporation, and shall record the articles of amendment in the office of the Secretary of the Commonwealth upon payment of the usual filing fee. * * * " (Emphasis supplied.)

It was the positon of the Secretary of Banking that it was his statutory duty to disapprove an amendment to the by-laws of the Credit Union which had the effect of automatically expelling certain members there of solely by reason of their failure or refusal to disaffiliate themselves from membership in a particular union.

The Banking Code, Act of May 15, 1933, P. L. 624, Article I, Section 14, as amended, 7 P.S. Section 819-14, requires that in approving or disapproving any action of an institution under the supervision of the Banking Department, it shall exercise such discretion in such a manner as it deems necessary to:

> "* * * maintain public confidence in the business of such institutions and to protect the public interest and the interests of depositors, other creditors *and shareholders thereof*." (Emphasis supplied.)

The Department of Banking considered it inequitable to disfranchise those who refused to change Union affiliation and to deprive them of rights incident to their share ownership in the Credit Union including the right to vote.

On April 27, 1961, after considerable correspondence and negotiations between the Credit Union and the Department of Banking a meeting of Federation Credit Union No. 89 National Federation of Post Office Clerks was held. At this meeting a new amendment to the Articles of Association and By-Laws was adopted with regards to the scope of membership, which read as follows:

> "The membership of the said credit union will be limited to the members in good standing of Local No. 89, National Federation of Post Office Clerks and to members in good standing of the Philadelphia Post Office Clerks Union in the Postal District of Philadelphia."

The purpose of this amendment was to qualify all members of the Credit Union Local No. 89 and the new Union, Philadelphia Post Office Clerks Union in the Postal

District of Philadelphia for membership in the Credit Union and thus to overcome the objection of the Department of Banking to the amendment originally proposed.

The Secretary of Banking after a complete analysis of the Credit Union Law, which requires aproval by the Secretary of not only the formation of Credit Unions, but of all changes in their Articles of Association (14 P.S. Section 202E), and after due consideration of all the facts and issues involved, approved the Articles.

The amended By-Laws and Articles of Association, as approved by the Secretary, provide that all parties who were members of Local Union No. 89 prior to the meeting of December 28, 1958, and all parties who become members of either Local Union 89 or Philadelphia Post Office Clerks Union subsequent to that date may be members of the Credit Union and vote with regard to the affairs of the Credit Union.

Prior to the time of the adoption of the second amendment representatives of the members of the Credit Union who had not disaffiliated themselves from Local Union No. 89 instituted the present action in the Court of Common Pleas of Philadelphia County. They sought to restrain the members of Local Union No. 89 who had disaffiliated themselves from that Union from participating or exercising any voting rights in the Credit Union. It was their position that by withdrawal from Local Union No. 89 all rights and privileges as shareholders in the Credit Union were forfeited, including any rights or control over the assets of the Credit Union, which included a surplus of approximately $182,000.00. After hearing and argument, the Chancellor, Honorable Raymond Pace Alexander, dismissed the complaint. After Judge Pace Alexander's decision, the Secretary of Banking approved the amendments. Thereafter exceptions were taken to the Chancellor's adjudication. The case was argued and reversed by the court en banc. The court en banc erroneously found that the Articles of Association had never been approved by the Secretary of Banking.

As a consequence of the action of the court en banc, 1,414 of the former members of Local Union No. 89 have been, in effect, expelled and disqualified from membership in the Credit Union. Twenty-two original members of the Credit Union, being the number of members of Local Union No. 89 who were Credit Union members and who refused to withdraw from said Labor Union, were held to be the only shareholders of the Credit Union who had the right to participate in or conduct any of the public affairs thereof.

THE COURT EN BANC ERRED IN ITS CONCLUSIONS OF LAW

The law as it existed at the time of the formation of Federation Credit Union No. 89, and the time of the vote on December 28, 1958, permitted the members to vote to change the Articles of Association and the By-Laws. The law at the time of the vote specifically provided as follows:

> "Credit union membership shall consist of the incorporators and such other persons as may be elected from time to time to membership and who subscribe to at least one share of the capital stock and pay the initial installment thereon, together with the entrance fee. * * * Credit union organizations shall be limited to groups of both large and small membership having a common bond of association by reason of occupation within a well defined neighborhood, community, or rural district." 14 P.S. §204.[2]

Not only did the common bond of association remain the same after the vote of the members but there is nothing

[2] It should be pointed out that not until September 20, 1961 was the law changed to permit the common bond of association to include "members in a religious, congregational, fraternal or labor organization": Act No. 658, Section 6, 14 P.S. Section 230-6.

in the Credit Union Act which would permit the disfranchising of a member except by expulsion. The law, aside from the expulsion provision, permits members to continue their affiliation without restriction.

The By-Laws in the instant situation, however, in Article II, Section 6, provide that:

> "A member who leaves the sphere of operation of the corporation may retain his shares of stock but may not become a borrower, endorser or guarantor on any loan and may not be an officer, director or member of any committee."

It is submitted that the common bond of association, at the time of the vote of Dec. 28, 1958 was the fact that the members were postal employees of the Postal District of Philadelphia and not that they were Union members, and they remained postal employees of the Postal District of Philadelphia after the vote disaffiliating themselves from the Labor Union.

CONCLUSION

It is respectfully submitted that there is no provision in the Credit Union Law or in the By-Laws of the Federation Credit Union which would authorize the disfranchisement of the members who continue to hold their shares, regardless of the Union affiliation which was required at the time they became members. The common bond of association remains after the amendment, as approved by the Secretary of Banking. The equitable and property rights of all individuals can only be protected by permitting the amendment to stand as approved by the Secretary of Banking.

The Secretary of Banking respectfully submits that it would be highly inequitable to destroy the rights of the former members of Local 89 in the Credit Union by reason of their forming a new Labor Union. This is particularly

so when it is considered that less than 2% of the members of the Credit Union remained affiliated with the original Labor Union.

It is therefore requested that your Honorable Court make such an order in this case as will protect and preserve the rights of all the orignal members of the Credit Union in the management and control of its assets.

FREDERIC G. ANTOUN
Deputy Attorney General

DAVID STAHL
Attorney General

Attorneys for Secretary of Banking, Commonwealth of Pennsylvania

APPENDIX F

Excerpt from opinion of the Honorable Judge Geller, dated May 28, 1959, Supreme Court of New York County in the case of *J. Cline House, et al., v. Bernard Schwartz, et al., New York Law Journal*, Vol. 141, No. 113, June 11, 1959.

V. *As to the Federal Credit Union:*

a. *The Court cannot entertain the request for injunctive relief with regard to its field of membership.*

Plaintiffs argue that they are entitled to the same equitable relief in the case of the credit union as previously urged in connection with the Family Hospital Plan, the former also being an adjunct of Local 10, whose field of membership was restricted to members of Local 10. For the reasons hereinbefore stated, it would appear that limited relief along the lines suggested by the court would provide a reasonable solution of the problem.

However, a credit union is the creature of federal enactment (Federal Credit Union Act, U.S.C.A., title 12, chap. 14), and its field of membership is one of the subjects over which express supervisory powers have been placed in the Bureau of Federal Credit Unions. In fact, plaintiffs have protested to the director of the Bureau that this credit union is wrongfully seeking to alter its field of membership. That protest has not been acted upon, because, evidently, the last amendment which was approved by the director simply froze the membership as of December 5, 1958, and no amendment has as yet been presented threatening the rights of members of Local 10. Plaintiffs obviously have not exhausted their remedies before the Bureau. The action in so far as it requests this relief must be regarded as premature.

Despite their protests to the Bureau, plaintiffs maintain that this court has jurisdiction to enjoin the credit union from amending its charter and By-Laws to exclude members of Local 10 and confine its field of membership to members of the new union. They point to the fact that the act provides no administrative remedies and that the relief requested would not impair the ability of the credit union to carry out its functions.

But the question is whether the federal act deals with the subject of the field of membership of a credit union and grants to the bureau administrative power embracing that subject. If so, the bureau has primary jurisdiction to pass upon the question of any proposed changes in the field of membership (see Note, Primary Jurisdiction, 51 Harv. L. R. 1251).

The act provides that membership shall be limited to groups having a common bond of occupation, association or address "to the extent permitted by rules and regulations" prescribed by the bureau. The organization certificate, which must specify the proposed field of membership, and a form of proposed By-Laws prepared by the bureau to be filled in and used by all credit unions must be approved by

the bureau. The right of amendment is expressly reserved. The organization certificate provides that the membership shall be as set forth in the attached By-Laws and amendments thereto approved by the bureau, and the By-Laws provide that no amendments thereto shall be effective unless approved in writing by the bureau.

It is clear that Congress has actually legislated on the precise subject of field of membership of these federal instrumentalities and placed administrative supervision of that subject with the bureau. The procedure maintained by the act must be observed (Franklin Nat. Bank v. New York, 347 U. S. 373; Lauer v. Bayside Nat. Bank, 244 App. Div. 601). Matter of Baldwinsville Fed. Sav. & Loan Ass'n. (268 App. Div. 414), cited by plaintiffs, is not in point.

b. *The Federal Credit Union is entitled to a dismissal of plaintiffs' claim against it for damages for conspiracy.*

It is expressly provided that a credit union may sue and be sued. The court accordingly reaches the merits of this claim for damages.

The court finds that the credit union committed no actionable tort in furtherance of the alleged conspiracy. Becoming the lessee of the premises in place of Local 10 and then subletting to it may have been intended to aid defendant officers to prepare for secession and prevent National from taking the lease over as an asset of Local 10, but it was justifiable business measure in its own interest to assure continued possession of quarters in view of the developing conflict. Moreover, plaintiffs were not damaged by said act, since they did gain possession no later than they would have had the lease remained in Local 10's name. Amending its By-Laws to freeze its membership as of December 5, 1958, may have been of assistance to the new union, but it was a perfectly legal act and a proper measure in its own interest to avoid the requirement that members leaving the field of membership must terminate their membership and be paid their investments.

Since the court has found no basis for plaintiffs' claim of conspiracy in the alleged luring of members from Local 10 to the new union, the contention that the credit union participated therein and is jointly and severally liable for damages is rejected.

As previously stated, the only actionable conspiracy in this case is with regard to the dissipation of Local 10's assets. The credit union has not been connected in any manner with that cause of action.

This claim for damages against the credit union is accordingly dismissed on the merits.

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IN THE

Supreme Court of the United States

October Term, 1963. No. 522.

FEDERATION CREDIT UNION, LOCAL NO. 69, N.F.P.O.C. and ALFRED A. NEUBAUER, et al.,
Petitioners,

v.

HUBERT P. RENDER, JOSEPH D. KENNEDY, and WILLIAM H. NOLAN,
Respondents.

Petition for Writ of Certiorari to Supreme Court of Pennsylvania.

BRIEF FOR RESPONDENTS IN OPPOSITION.

EDWARD DAVIS,
215 South Broad Street,
Philadelphia 7, Pa.,
Counsel for Respondents.

I. F. Huntsinger Co., *Appellate Printers*, Camden, N. J.

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IN THE

SUPREME COURT OF THE UNITED STATES.

October Term, 1963. No. 522

FEDERATION CREDIT UNION, LOCAL NO. 89, N.F.P.O.C. AND ALFRED A. NEUBAUER, ET AL.,

Petitioners,

v.

HUBERT P. RENDER, JOSEPH D. KENNEDY and WILLIAM H. NOLAN,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO SUPREME COURT OF PENNSYLVANIA.

BRIEF FOR RESPONDENTS IN OPPOSITION.

OPINIONS BELOW.

The Opinions of the Supreme Court of Pennsylvania are reported in 411 Pa. 625 (1963) (Appendix A to Petition). The per curiam opinion of the court below in Pennsylvania, affirmed by the majority of the Supreme Court of Pennsylvania, is unreported (Appendix B of Petition at pages 43-58).

JURISDICTION.

The Petition fails to set forth sufficient requisites to the jurisdiction of this Court.

QUESTION PRESENTED.

Where the judgment of a state court restrains officers and members of a state credit union from violating the state statute and letters patent under which it was chartered, and where the judgment rests squarely upon independent and adequate non-federal grounds, should not a petition for writ of certiorari be denied?

CONSTITUTIONAL PROVISION INVOLVED.

There are no provisions of the United States Constitution, or the Amendments thereto, involved in these proceedings, contrary to the statement in the Petition.

STATUTE INVOLVED.

The pertinent provisions of the Pennsylvania Credit Union Law, Act of May 26, 1933, P. L. 1076, as amended, 14 Pa. Stat. Annot. §201 et seq. See sections of the statute printed in Appendix D of Petition, pp. 59-61, and §§2E, 3X, 15 (14 Pa. Stat. Annot. §§202E, 203X, 215) set forth in Appendix A of this Brief, pp. 20-22.

STATEMENT.

The instant Petition arises from the entry of judgment by the Supreme Court of Pennsylvania, affirming the *unanimous* per curiam opinion of the Court of Common Pleas No. 4 of Philadelphia County, which had restrained the officers and members of a *state* chartered credit union from violating the Pennsylvania statute under which it was chartered, and further, from violating the letters patent or charter of the credit union.

The chancellor, who sat as a member of the lower court en banc, joined in the per curiam opinion of that court, sustaining exceptions to his original adjudication. The per curiam action of the court en banc, affirmed by the Penn-

sylvania Supreme Court, operated to extinguish any independent existence of the chancellor's adjudication.[1]

In 1959 respondents, as shareholders and members of the petitioner, Federation Credit Union, Local No. 89, N.F.P.O.C. (hereinafter referred to as "Credit Union") instituted an equitable action against the individual petitioners who, until December 28, 1958, had been the officers, directors and committee members of the Credit Union (R. 1a, 6a-14a, 130a, 155a, 156a, 346a, 347a). Prior to December 28, the petitioners had also been members in good standing of Local Union No. 89 of the National Federation of Post Office Clerks, AFL-CIO (hereinafter referred to as "Local 89") (P-8, R. 209a-212a; 239a, 243a). However, the individual petitioners, disaffiliated from Local 89 on December 28, 1958, and they are presently members of a new organization known as the "Philadelphia Post Office Clerks Union" (hereinafter referred to as "Clerk's Union") whose aims and objectives are identical with those of Local 89 (Findings of Fact Nos. 7, 10, R. 357a, 358a, Appendix B of Petition, pp. 53, 54).

The Credit Union was established in 1934 by the issuance of Letters Patent by the Governor of Pennsylvania, based upon a duly filed Application for Incorporation (Finding of Fact No. 1, R. 356a, Appendix B of Petition, p. 52; P-3, P-3a, R. 195a-202a). The Letters Patent provide in Section 8 as follows:

> "The membership of the said CREDIT UNION will be *limited to members in good standing of Local Union No. 89*, National Federation of Post Office Clerks in the postal district of Phila., Pa." (Emphasis supplied) (P-3a, R. 198a).

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[1] The attention of the Court is directed to the fact that the per curiam opinion of the court en banc is printed in Appendix B of the Petition (pp. 43-58) **following**, rather than **preceding**, the original adjudication (pp. 21-43).

The Credit Union has been in operation continuously since 1934. Article II, Sections 1 and 6 of its By-Laws provide that membership in the Credit Union is limited to members in good standing of Local 89, as set forth in the Letters Patent, and that a member who leaves "the sphere of operation" of Local 89 may retain his shares, but may *not* become a borrower or an officer, director or committee member (Findings of Fact Nos. 3-5, R. 356a, 357a, Appendix B of Petition, pp. 52, 53).

The latter limitation upon membership is in accordance with the Pennsylvania Credit Union statute,[2] which provides in Section 4, in pertinent part, as follows:

> ". . . Credit union organizations shall be limited to groups . . . having a common bond of association by reason of occupation within a well defined neighborhood, community, or rural district." (Appendix D of Petition, p. 59.)

In the case at bar the common bond of association has at all times been membership in good standing in Local 89.

Local 89 is governed by a Constitution, Article III, Section 1 of which relates to eligibility for membership and provides that certain classifications of post office employees shall be eligible, excepting, however, ". . . any person who is a member of any other Post Office Clerks' Organization whose ostensible aims are identical with those of the National Federation of Post Office Clerks." (P-1, R. 176a, 177a, 346a, Appendix B of Petition, p. 45.)

For some time prior to December 28, 1958, the individual petitioners had been engaged in the organization of the

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[2] Act of May 26, 1933, P. L. 1076, as amended, 14 Pa. Stat. Annot. §201 et seq. (hereinafter referred to as the "Act").

Clerks Union as a rival to Local 89, contrary to the Constitution of Local 89, supra, and its By-Laws.[3]

On December 28, 1958, the individual petitioners formally severed their affiliation with Local 89 by adopting a resolution of disaffiliation at a meeting convened for that purpose at *2 o'clock P. M.* (P-8, R. 209a-212a; Finding of Fact No. 10, R. 358a, Appendix B of Petition, p. 54). *Immediately* after the adjournment of this meeting, a special meeting of the Credit Union was held at *4 o'clock P. M.*, at the same place, and there the individual petitioners, and others who had disaffiliated from Local 89, voted in favor of amending the By-Laws of the Credit Union by changing the name from "Federation Credit Union No. 89, N.F.P.O.C." to "Philadelphia Post Office Clerks Credit Union". (Finding of Fact No. 11, R. 358a, Appendix B of Petition, p. 54).

A second special meeting of the Credit Union was called by the individual petitioners on April 27, 1961 where proposed amendments to the Articles of Association and By-Laws of the Credit Union, involving eligibility for membership and the proposed change of name, were again voted upon by the individual petitioners and those who had disaffiliated from Local 89 (R. 247a-253a, 348a, 349a, Appendix B of Petition, pp. 46, 47).

The Pennsylvania Supreme Court affirmed the lower court's findings and conclusions that the attempt of the individual petitioners, in each of the above instances, to amend the Articles of Association and By-Laws of the Credit Union was contrary to the substantive provisions of the Act, the Articles of Association and the By-Laws, and was, therefore, a nullity (Conclusions of Law Nos. 11-14, R. 361a, Appendix B of Petition, pp. 48, 55, 56). The basis for these

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[3] In addition to the excerpts from the Constitution of Local 89 in P-1, R. 175a-179a, see Article VI, Section 2 (Appendix B of this Brief, p. 23) and Constitution and By-Laws of National Federation of Post Office Clerks: Article VI, Section 3, Article VIII, Section 8 (Appendix C of this Brief, p. 24).

conclusions was the finding that the votes purporting to approve the proposed amendments were cast by individuals "... who were not members in good standing of Local No. 89, N.F.P.O.C." (Findings of Fact Nos. 14, 15, R. 359a, Appendix B of Petition, p. 54).

The court en banc found further that the individual petitioners had since their act of disaffiliation from Local 89 on December 28, 1958 operated the Credit Union in an unlawful manner and for an unlawful object (Findings of Fact Nos. 12, 13, R. 358a, 359a, Appendix B of Petition, p. 54; Conclusions of Law Nos. 8, 9, 15, R. 360a, 361a, Appendix B of Petition, pp. 55, 56).

The crux of the holding below is found in the following passages of the per curiam opinion:

> "In light of the sequence of events of December 28, 1958, it is clear that those who voted to amend the name of the credit union were not members of the credit union as defined and set forth in the Articles of Association and By-Laws of the credit union . . .
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> * * * * * * * *
>
> ". . . Therefore, under the Act of 1933, the Articles of Association of the credit union and its By-Laws, such attempted amendments are clearly a nullity . . .
>
> * * * * * * * *
>
> "Plaintiffs' (respondents herein) argument that defendants (petitioners herein) have sought to change the organic purpose of the credit union must likewise be affirmed. Defendants have taken control of the credit union and its assets contrary to the applicable law, the Articles of Association and By-Laws. Moreover, they have attempted to unlawfully change the purpose for which the credit union was chartered and seek to transfer its funds and property to the Federation Credit Union, the proposed new name of the credit

union" (R. 348a, 351a, 355a, Appendix B of Petition, pp. 46, 48, 51).

Basic to the proceedings in the courts of Pennsylvania was whether or not a court of equity had jurisdiction to grant the injunctive and affirmative relief sought by respondents against the unlawful conduct and actions of the individual petitioners [See Pennsylvania Supreme Court: Brief for Appellees (pp. 12-28), Brief for Appellants (pp. 28-34)]. This issue was resolved against petitioners, the relief prayed for by respondents was granted, and the decree of the court en banc was affirmed by the Supreme Court of Pennsylvania (Conclusions of Law Nos. 18-24, R. 362a, 363a, Appendix B of Petition, pp. 56-58).

Before proceeding to the argument and reasons for denying the writ, respondents call the Court's attention to the fact that petitioners have, in setting forth their statement of the case relied almost verbatim upon the dissenting opinion of Justice Roberts of the Pennsylvania Supreme Court. Hence, to comment upon it at this point would only be to quarrel with the dissenting opinion (compare Petition, pp. 3-5 with Appendix A of Petition, pp. 17-19).

ARGUMENT.

The reasons for denying the Petition for Writ of Certiorari in this case are manifold.

First, it is difficult to imagine a clearer case of a state court judgment resting upon a truly independent and adequate non-federal ground. Even the petitioners are compelled to concede that the majority opinion of the Pennsyl-

vania Supreme Court "ostensibly is based solely upon a non-federal ground" (Petition, p. 6).

Secondly, the record is clear in this case that the petitioners utterly failed to raise the alleged federal question involving the "due process clause" of the 14th Amendment in the proceedings before the Supreme Court of Pennsylvania. An examination of the petitioners' Brief to the Pennsylvania Supreme Court confirms this fact. Significantly, they do not state in the Petition that it was raised in their brief. Reference to the Petition, in this connection, clearly indicates their awareness that the "due process" question was "first cognizable" after entry of the final decree by the court en banc and prior to the appeal to the Pennsylvania Supreme Court (Petition, p. 6). Yet the only reference to the record which petitioners can make is that contained in the dissenting opinion of Justice Roberts of the Pennsylvania Supreme Court (Petition, p. 6).

Thirdly, there is, in fact, no federal question in these proceedings. This contention of respondents is supported by an examination of the Petition (pp. 2-14), which demonstrates an unwillingness or inability on the part of the petitioners to state their questions or to present reasons for granting the writ in terms of a clear-cut federal question.[4]

Finally, the petitioners have failed to advance any "special and important reasons" which would warrant the granting

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[4] The petitioners have characterized the action of the Pennsylvania Supreme Court as "without justification or authority" (p. 7, lines 10, 11; p. 8, line 32), "unsound and unnecessary" (p. 8, line 34), "to usurp the powers of the Secretary of Banking" (p. 11, lines 16, 17), "anomalous" (page 12, line 34), "unfortunate conflict" (p. 13, line 9), and "detrimental results" (p. 14, lines 18, 19). It is significant that the petitioners have consciously or unconsciously refrained from casting the holding of the Pennsylvania Supreme Court in terms of a violation of the petitioners' rights of "due process" under the 14th Amendment.

of the writ under the criteria set forth in Rule 19(1) of this Court.[5]

A. The Judgment of the Pennsylvania Supreme Court is based upon independent and adequate non-federal grounds.

In affirming the per curiam decree of the court en banc, the Pennsylvania Supreme Court said:

> "In this action the chancellor, as a member of the court en banc, joined in sustaining exceptions to his adjudication. The decree of the court en banc restrained officers and members of a credit union from violating the statute under which the credit union was chartered and the Letters Patent chartering the credit union" (Petition, Appendix A, p. 16).

The Court in this brief, lucid opinion dispelled any question or doubt as to the non-federal basis for its decision. The individual petitioners, as officers and members of a state chartered credit union, were restrained from (1) violating the state statute, and (2) violating the charter or Letters Patent under which the credit union was chartered.

Respondents respectfully submit that there can be no

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[5] The petitioners have set out in footnote 8 of their Petition (pp. 6, 7) certain statistics which do not appear of record, pertaining to **federal** credit unions, in an obvious and belated attempt to attach a significance to this case which is non-existent. This case is **sui generis**, and it involves nothing more than the construction of the Pennsylvania Credit Union Law, supra, and the conduct of the individual petitioners with respect to a state credit union chartered under this law. The petitioners also included in the Petition (Appendix F, pp. 68-71) excerpts from an opinion of the Supreme Court of New York, which involves a **federal** credit union, and which has no application in this case for the same reason.

clearer instance of the disposition of a case on non-federal grounds than the action of a state court in restraining the violation of an act of the legislature as well as the violation of a charter issued pursuant to the authority of the same act. It must be borne in mind that it was the unlawful actions of the individual petitioners in these proceedings which resulted in the entry of such a decree.

The Letters Patent of the Credit Union, issued in 1934, provide in Section 8 that membership in the credit union is limited to "members in good standing" of Local 89. The By-Laws contain the same limitation and provide additionally, in conformance with the Pennsylvania Credit Union Law, that a member who leaves the "sphere of operation of the corporation", i.e., Local 89, may *retain his shares*, but may not become a borrower, officer, director or committee member of the Credit Union. See By-Laws, Article II, Sections 1, 6 (P-2, R. 181a, 182a).

The individual petitioners on December 28, 1958 *voluntarily* disaffiliated from Local 89 and formed a rival union. The subsequent actions of the petitioners after disaffiliation were not taken as members of Local 89 and, therefore, were without the sanction of, and in conflict with, the Act, the Letters Patent, and the By-Laws. Thus, the two attempts to amend the By-Laws in December of 1958 and in April of 1961, each of which sought to destroy the organic purpose of the Credit Union, were deemed a nullity since the votes for these amendments were cast by "individuals who were not members in good standing" of Local 89 (Appendix D of Petition, pp. 54-56).[6]

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[6] The petitioners belabor the Pennsylvania Supreme Court for having allegedly usurped the power of the Secretary of Banking to approve amendments under Section 3X of the Act (Appendix A of this Brief, pp. 21, 22); Petition, pp. 11-14. The court en banc, affirmed by the Pennsylvania Supreme Court, found that the purported amendments were a nullity (R. 351a).

Further, the control and management of the Credit Union, and the continuance in office by the individual petitioners after December, 1958 was unlawful since they had ceased to be eligible for office under the Letters Patent and the By-Laws. They had after that date continued to grant loans to individuals not in good standing in Local 89, contrary to the By-Laws (Article II, Section 6, supra).

It was under these circumstances that the court en banc granted the prayer of respondents' complaint for equitable relief, restraining further unlawful conduct and ordering the individual petitioners to return control of the credit union to the respondents as representatives of the members in good standing of Local 89. Viewed in this context, the contention of petitioners that they were deprived of "due process" is plainly makeweight and wholly without merit.

The petitioners would have this Court adopt their contention that a federal "due process" question exists by virtue of the alleged failure of the Pennsylvania Supreme Court to give effect to Section 18 of the Act, which pertains to the procedural requirements for the expulsion of a member from a credit union (Petition, pp. 7, 8). However, there is no issue in this case of expulsion from membership in the Credit Union or deprivation of property rights within the meaning of Section 18 of the Act. This Section has no application to members who *voluntarily* leave the "sphere of operation" of the Credit Union, as did the individual petitioners by their voluntary act of disaffiliation from Local 89. After leaving the "sphere of operation", they no longer possessed the requisite standing in the Credit Union to effect amendments to the Articles of Association or the By-Laws, or to continue their operation and management of the Credit Union. But their "property rights" in existing shares on deposit in the Credit Union continued unimpaired by express provision in Article II, Section 6 of the By-Laws and Section 18 of the Act, supra.

It is submitted that the Pennsylvania Legislature in enacting the Credit Union Law has guaranteed to *all* members of Credit Unions duly chartered thereunder, full protection (1) in the exercise of the rights of membership and (2) in the property invested therein.[7] It was solely the refusal of petitioners to abide by the Act, the Letters Patent and the By-Laws in the aforesaid respects, upon disaffiliation from Local 89, that resulted in the decree of the court en banc, affirmed by the Supreme Court of Pennsylvania.

In adjudicating the rights of the parties to this proceeding, the Pennsylvania courts properly relied upon and applied *only* Pennsylvania law, in particular the applicable Act of the Legislature and the decisional law of the Pennsylvania Supreme Court (Appendix B of Petition, per curiam opinion, pp. 43-52). Hence, this is not a case involving the application of federal statutes or the transgression of Congressional policy, as petitioners would lead this Court to believe.[8] Such argument as the petitioners advance regarding the purported existence of federal substantive law in this case is based upon the original adjudication of the chancellor, which ceased to have an independent existence in these proceedings upon his joining with the court en banc in the per curiam opinion. This was duly noted by the Supreme Court of Pennsylvania in affirming the per curiam decree (Appendix A of Petition, p. 16). Aside from the

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[7] See, for example, Sections: 2E (amendment of Articles), 4 (requisites of membership), 5 (supervision by Department of Banking), 6 (rights at meetings), 15 (requisites for loans), and 18 (procedural guarantees in cases of expulsion from membership; right of expelled or withdrawing member to net funds on deposit). Appendix D of Petition, pp. 59-61, Appendix A of this Brief, pp. 20-22.

[8] See, for example: Petition, Question Presented, III, p. 2; the reference to interstate commerce in the original adjudication of the chancellor, p. 5; argument on Question Presented, III, pp. 14, 15; Appendix C, excerpts from Labor-Management Relations Act of 1947 and Labor-Management Reporting and Disclosure Act of 1959, pp. 58, 59

present legal status of the original adjudication, the contentions and argument advanced in support of Question Presented, III, are without legal substance.

Respondents submit that petitioners' argument and citation of authorities (Petition, pp. 9-11), flatly fails to establish a denial of due process by the Supreme Court of Pennsylvania in affirming the per curiam opinion of the court en banc. The respondents do not quarrel with the authorities of this Court cited by the petitioners in this connection, but do strenuously contend that they have no application to the actions of the Pennsylvania courts in these proceedings. The suggestion by the petitioners that they have application in this case is untenable and makeweight.

Respondents again direct the Court's attention[9] to the fact that the petitioners' argument (Petition, pp. 11-14) that the decision of the Pennsylvania Supreme Court operated to "usurp the powers of the Secretary of Banking" is patently absurd. It is true that Sections 2E and 3X of the Act, supra, do impose certain ministerial duties upon the Secretary of Banking. The obvious effect of the holding of the Pennsylvania courts in this case is that the Secretary of Banking cannot impart validity to amendments submitted to him for approval which were not validly adopted, i.e., a nullity as found by the court en banc.[10] Thus, petitioners are merely begging the question when they belabor the Pennsylvania Supreme Court for having allegedly failed to permit the Secretary of Banking to function, in this case, under the applicable Sections of the Act.

As noted previously, there is nothing in this case which involves a *federal* credit union. Hence, the inclusion by

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[9] See footnote 6, supra.

[10] Petitioners twice state that the amendments of April 27, 1961 "were approved" by the Department of Banking (Petition, pp. 4, 12). This was not part of the record in the proceedings below.

the petitioners of excerpts from a decision of the New York Supreme Court (Appendix F of Petition, pp. 68-71), involving a *federal* credit union, has no application to the instant case, nor does the supporting argument in the Petition (p. 12). The case referred to by the petitioners involved the question of whether or not Congress had vested in an administrative agency primary jurisdiction over *federal* credit unions.

Finally, respondents submit that the foregoing analysis of the proceedings in the Pennsylvania courts wholly supports the basic proposition herein that there was no federal question involved in these proceedings, at any time. Even assuming *arguendo* that there was a federal question, it is manifest beyond doubt that the decision of the court en banc, affirmed by the Pennsylvania Supreme Court, was correctly predicated upon an *independent and adequate non-federal ground*. This Court has held many times that it will not review decisions of state courts in these circumstances.

Cramp v. Board of Public Education, 368 U. S. 278, 281 (1961);

Black v. Cutter Laboratories, 351 U. S. 292, 297, 298 (1956);

Herb v. Pitcairn, 324 U. S. 117, 125, 126 (1944);

Fox Film Corp. v. Muller, 296 U. S. 207, 210 (1935).

In *Durley v. Mayo*, 351 U. S. 277, 281 (1956), this Court held, inter alia, that where adequate state grounds are asserted, it is petitioner's burden to show that none of the state grounds account for the decision of the state court, and further, that this burden is *not* met if the state judgment *might* have rested on a non-federal ground.

It is respectfully submitted that the petitioners in the case at bar have not met the substantial burden required by this Court for the granting of a writ.

B. The Petitioners failed to raise a federal due process question before the Pennsylvania Supreme Court.

Preliminarily, it should be noted that the petitioners and the respondents have been, and are, the only parties of record in these proceedings.[11] The significance of this fact is relevant to consideration of the alleged federal due process question which petitioners seek to articulate for the first time in the proceedings now before this Court.

The petitioners in their Statement of the Case concede that the "due process" clause of the 14th Amendment of the United States Constitution was "first cognizable" after the final decree of the court en banc was rendered and prior to the taking of the appeal by the petitioners to the Pennsylvania Supreme Court (Petition, p. 6). What the petitioners omit to state, however, is that they wholly failed to raise the "due process" question in their Brief to the Pennsylvania Supreme Court. This omission is underscored by the fact, as stated in the Petition (p. 6), that:

> ". . . the only mention *of record* of a deprivation of due process, is that of Mr. Justice Roberts and Mr. Chief Justice Bell in their dissenting opinion . . . The decision of the majority of the Supreme Court of Pennsylvania ostensibly is based solely upon a non-federal ground . . ."

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[11] The Pennsylvania Secretary of Banking and the Pennsylvania Credit Union League filed briefs with the Pennsylvania Supreme Court in the nature of **amicus curiae**, as permitted under the Rules of the Pennsylvania Supreme Court. At no time did either seek to intervene as a **party** in these proceedings at any stage of the litigation under the local rules of the Pennsylvania courts. Notwithstanding, the petitioners have included the Brief of the Secretary of Banking as Appendix E of Petition, pp. 62-68.

It is well settled by the decisions of this Court that a litigant is precluded from raising federal questions which could have been, but were not raised and presented to the state court.

> *Shelley v. Kraemer*, 334 U. S. 1, 8 (1948);
> *Wilson v. Cook*, 327 U. S. 474, 483, 484 (1946);
> *McGoldrick v. Compagnie Generale Transatlantique*, 309 U. S. 430, 434, 435 (1940).

As this Court said in *Williams v. Kaiser*, 323 U. S. 471 (1945) at page 477 of its Opinion:

> ". . . before we will review a decision of a state Court it must *affirmatively* appear from the *record* that the federal question was presented to the highest court of the State having jurisdiction and that its decision of the federal question was *necessary* to its determination of the cause . . . ." (Emphasis supplied).

An examination of the Brief submitted by petitioners to the Supreme Court of Pennsylvania makes it abundantly clear that there was no federal "due process" question presented to the Pennsylvania Supreme Court.[12]

The failure of the petitioners to have raised the "due process" question in *their* Brief is substantiated by the fact that in the "Petition For Certificate Under 28 U. S. C. 1257," filed by the petitioners with the Pennsylvania Supreme Court in the course of perfecting the instant appeal, the petitioners, in Paragraph 4 thereof, were able to refer *only* to the Brief of the Pennsylvania Credit Union League (pp.

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[12] It is well settled that this Court will not recognize oral argument to a court as part of the record of the case, so that petitioners could not advance the contention that they made oral argument to the Pennsylvania Supreme Court of the federal due process question. **Sayward v. Denny**, 158 U. S. 180 (1895).

12-14) as having dealt with "the loss of property rights." As heretofore noted, the Pennsylvania Credit Union League was never a party in these proceedings, and hence, the petitioners cannot seek refuge in that brief as fulfilling the requirement of this Court that these matters be raised by a *party* in the state court.

C. There exist no special and important reasons for granting the writ.

Rule 19(1) of this Court provides, in part, that the granting of a writ of certiorari:

> "... is not a matter of right, but of sound judicial discretion, and will be granted only where there are *special and important reasons* therefor ..." (Emphasis supplied).

The Court in the case of *Rice v. Sioux City Memorial Park Cemetery*, 349 U. S. 70 (1955), construed Rule 19 in the course of dismissing a writ improvidently granted:

> "A federal question raised by a petitioner may ... present an intellectually interesting and solid problem. But this court does not sit to satisfy a scholarly interest in such issues. Nor does it sit for the benefit of the particular litigants ... 'Special and important reasons' imply a reach to a problem beyond the academic or the episodic ..." (349 U. S. at 74).

A fair examination of the Petition with reference to Rule 19 and the above comments thereon in the *Rice* case demonstrates clearly that "special and important reasons" for granting the instant writ are non-existent. The instant factual situation is of interest to the litigants, of course, but

it is *sui generis*. The likelihood of such a case arising again is remote indeed. It is difficult indeed to conceive of the questions decided in these proceedings as having any general interest or application "beyond the academic or the episodic."

That petitioners are aware of the foregoing is apparent from their futile attempts to dramatize this case by injecting irrelevant national statistics on state and federal credit unions (Petition, pp. 6, 7, footnote 8).

To grant the prayer of the Petition would place this Court in the position of sitting ". . . for the benefit of the particular litigants."

Rice v. Sioux City Memorial Park Cemetery, supra.

CONCLUSION.

For the foregoing reasons the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

EDWARD DAVIS
Counsel for Respondents

November 1, 1963

APPENDIX A.

Pennsylvania Credit Union Law of May 26, 1933, P. L. 1076, as amended:

Section 2E (14 Pa. Stat. Annot. 202E).

Method of Incorporation. A credit union may be incorporated in the following manner, to wit:

* * * * * * * * *

E. The articles of association may be amended by including the proposed amendments in the call for the regular or special meeting at which such amendments are to be considered. Amendments to the articles of association must be approved by three-fourths of the members present at the regular or special meeting at which the amendments are considered, and the proposed amendments shall be acted upon only in the event that a quorum of the members is present, as provided in the by-laws of the credit union. Articles of amendment shall be filed with the Secretary of Banking who, if he approves the amendments, shall forward the articles of amendment to the Department of State. The Secretary of the Commonwealth shall then issue a new certificate of incorporation, and shall record the articles of amendment in the office of the Secretary of the Commonwealth upon payment of the usual filing fee. The articles of amendment shall set forth —

I. The name and principal place of business of the credit union.

II. The amendment or amendments as adopted by the members.

III. The date of the meeting at which the amendment or amendments was adopted.

IV. That notice of the meeting at which the amendment or amendments was considered was given to each member as provided in the by-laws.

V. That, at the meeting at which the amendment or amendments was considered, a quorum of the members was present as provided in the by-laws.

VI. That the amendment or amendments was approved by three-fourths of the members then present.

The articles of amendment shall be signed by the president and clerk of the credit union and acknowledged before any officer authorized to take acknowledgments and administer oaths and affirmations in this Commonwealth, and they shall also make and subscribe an oath or affirmation before said officer that the statements contained therein are true.

Section 3X (14 Pa. Stat. Annot. 203X).

Powers. Each credit association so formed under the provisions of this act, and when so formed by virtue of its existence as such, shall have the following powers:

* * * * * * * * *

X. To make, amend, and alter by-laws, not inconsistent with law, for the regulation of its affairs and the conduct and management of the credit union. By-laws so made,

amended, or altered shall not become operative, however, until approved by the Department of Banking.

* * * * * * * * * * * *

Section 15 (14 Pa. Stat. Annot. §215).

Loans. A credit union may make loans to its members only. Loans must be for a purpose deemed by the credit committee to be provident or for productive purposes, and must be made subject to the conditions contained in the by-laws. A borrower may repay his loan, in whole or in part, any day the office of the credit union is open for business. A director, officer, or member of any committee may only borrow from the credit union in which he holds office, an amount not exceeding his total share holdings plus the total share holdings free and unpledged of any endorser on the obligation of such director, officer or member of any committee. No director, officer, or member of any committee may endorse a loan granted by the credit union in which he holds office.

APPENDIX B.

EXCERPTS FROM CONSTITUTION OF LOCAL UNION NO. 89—NATIONAL FEDERATION OF POST OFFICE CLERKS.

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ARTICLE VI.

OFFICERS.

* * * * * * * * *

Section 2. No member of this Local Union holding membership in any other Post Office Clerks' organization whose ostensible aims are identical with the National Federation of Post Office Clerks shall be eligible to hold any elective office or act as a representative or delegate from this Local Union to any convention of the American Federation of Labor-Congress of Industrial Organizations or the National Federation of Post Office Clerks.

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APPENDIX C.

EXCERPTS FROM CONSTITUTION AND BY-LAWS OF THE NATIONAL FEDERATION OF POST OFFICE CLERKS—AFFILIATED WITH THE AFL-CIO.

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ARTICLE VI.

OFFICERS, COMMITTEES, AND ELECTIONS.

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Sec. 8. No clerk, holding membership in any other postal employee organization whose ostensible aims are identical with the National Federation of Post Office Clerks can be seated as a delegate to a convention or elected as an officer of the National Federation of Post Office Clerks.

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ARTICLE VIII.

REVENUES AND CHARTERS—FISCAL YEAR.

* * * * * * * * *

Sec. 8. The Executive Board is hereby vested with authority to revoke the charter of any local whenever, upon evidence satisfactory to a majority of the Executive Board, it is shown that a local is guilty of disloyalty or where its actions have been adverse or detrimental to the welfare of the rank and file of the National Federation of Post Office Clerks.

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